THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

Company Petition No. 3196 of 2018

In the matter of the Companies Act, 2013
under Sections 241 and 242;
And
In the matter of oppression and mismanagement in the affairs of Attitude Life Science Products Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Plot No. 35/2, D-2 Block, MIDC, Chinchwad, Pune 411019.;
among

Mr. Rajeev Kumar Gupta

a non-resident Indian, residing at Villa
No. 003, C-1, Al Naseem - Cl,
Mudon l, Dubai

… Petitioner

Versus

Attitude Life Science Products Private Limited

a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Plot No. 35/2, D-2 Block, MIDC, Chinchwad, Pune-411019

….. Respondent no. 1

Mr. Nitin Mahendraprasad Gupta

an Indian inhabitant, residing at Nirmal, Plot No. 162,

Sector No. 24, Nigdi, Pune-411004

…….. Respondent no. 2

Mrs. Neena Nitin Gupta
an Indian inhabitant, residing at Nirmal,
Plot No. 162, Sector No. 24, Nigdi, Pune-411044

…….. Respondent no. 3

Order Pronounced on 07.10.2026

Coram :

Shri Prabhat Kumar — Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey — Hon'ble Member (Judicial)

Appearances:

For the Petitioner : Adv. Shravani Deshmukh

For the Respondent nos. 1, 2 & 3 : Adv. Rafiq Peermohideen,
Adv. Mohammed Asim

ORDER

Facts of the case

1. The present Company Petition 3196 of 2018 was filed on 23.08.2018 under Sections 241 and 242 of the Companies Act, 2013 ('Act') by Mr. Rajeev Kumar Gupta ('Petitioner / P1') praying reliefs against the alleged acts of oppression and mismanagement committed by Mr. Nitin Mahendraprasad Gupta ('Respondent no.2/ R2') and Mrs. Neena Nitin Gupta ('Respondent no.3/ R3') in the affairs of **Attitude Life Science Products Private Limited** ('Respondent no. 1 Company/ R1').

2. The company was incorporated on 09.04.2009 at Pune under the Companies Act, 1956. It is a private, non-government company limited by shares and has its registered office at Plot No. 35/2, D-II Block, MIDC, Chinchwad, Pune, Maharashtra - 411019. The business of the company, as stated in its Memorandum of Association and the Board's Reports, includes manufacturing, trading, import and export of consumer goods, tools and equipment, medical consumables, aluminium products, plastic furniture and electronic goods.

3. The Petitioner, Mr. Rajeev Kumar Gupta, is a non-resident Indian and holds 33% of the equity share capital in the company at the relevant time. The Respondent, Mr. Nitin Gupta holds 5,90,818 equity shares and 10,04,182 preference shares. Mrs. Neena Nitin Gupta is the wife of Mr. Nitin Gupta. The company has been managed by a Board consisting of Mr. Nitin Gupta, who has been a director since incorporation. Mr. Rajeev Kumar Gupta, who was appointed as a director on 17.04.2009 and Mrs. Neena Nitin Gupta.

4. It is stated that the Petitioner was approached by Mr. Nitin Gupta and Mrs. Neena Nitin Gupta in or around the beginning of 2009 and requested his assistance and investment for setting up a company which would manufacture and trade in consumer goods and industrial products. Consequently, the Petitioner invested capital in the business on the repeated assurances of reasonable returns on the investment besides said investment remaining secure. The Petitioner was appointed as a director of the company on 17.04.2009 and ceased to be its Director on 22.02.2021, however, he did not manage the day to day affairs of the company as he was residing in Dubai and have been visiting India infrequently. Petitioner prays for the following reliefs:

    a. The Petitioner seeks appointment of an Administrator, Special Officer or Independent Committee to manage the affairs and business of the Company. Alternatively, the Petitioner seeks appointment of an independent Board of Directors to take charge of the Company's management.
    b. The Petitioner seeks a special audit of the Company's books and accounts by the existing or independent auditors, particularly to examine the utilization and disbursement of the Company's funds and properties.
    c. The Petitioner also seeks directions requiring Respondent Nos. 2 and 3 to provide complete disclosure and inspection of the Company's statutory and financial records, including registers, minutes, accounts,

contracts, financial statements, bank statements, investments, loans, guarantees, financial arrangements and details of capital expenditure.

d. The Petitioner further seeks an injunction restraining Respondent Nos. 2 and 3 from issuing further shares, dealing with or disposing of Company assets, disturbing his shareholding, creating liabilities or undertaking capital expenditure, giving loans, transferring or making payments from Company funds, operating Company bank accounts or passing Board resolutions without his prior written consent.

e. The Petitioner also seeks directions for the Respondents to provide his original share certificates, payment of the costs of the Petition by the Respondents and such other orders as the Tribunal may consider appropriate.

Case of the Petitioner

5. Petitioner states that from 2012, Mr. Nitin Gupta and Mrs. Neena Nitin Gupta started managing the affairs of the company unilaterally and deliberately excluded him from its management. He was not receiving notices of Board Meetings and Annual General Meetings, financial details of the company despite repeated requests to the Respondents and the Company.

6. Petitioner states that, because of the Respondents' conduct and his inability to obtain company records, he engaged an independent consultant to examine the filings made with the Registrar of Companies (RoC) and got to know that funds were diverted for the benefit of Mr. Nitin Gupta, Mrs. Neena Nitin Gupta and certain sister concerns or related parties. Petitioner further alleges that fixed assets worth more than Rs. 4 crores were purchased in the name of the company, but that these assets were fictitious, were not actually used by the company and were instead used for the personal benefit of the Respondents or by Attitude Plastics Private Limited, in which the Respondents were directors. He further relies upon the consultant's report to allege that the company's books and ledgers showed a trail of “circular funding”, under which money was allegedly moved

through different entities and routed back to the company through other entities, including M/s Shakti Machine Tools, M/s Shriram Engineering and M/s S.D. Electricals.

7. Petitioner further states that the company advanced interest-free loans to M/s S.D. Electricals, M/s Shakti Machine Tools (Talawade), M/s Envision Environmental Solutions and M/s Vasudhaeco Friends Project Private Limited. He states that, the recipient entities were directly or indirectly controlled by the Respondents. Petitioner states that an "i10 Grand Asta" car was purchased in the name of the company and had instead allegedly been gifted by Mr. Nitin Gupta to his personal Chartered Accountant, Mr. Lalit Pophale. Petitioner alleges further that the company's books showed inventory of approximately Rs. 9 crores, whereas it was less than Rs.50 lakh.

8. Petitioner states that, on the records of Ministry of Corporate Affairs (MCA) , the company's authorised share capital was increased on 31.10.2011 to Rs.2 crore, comprising 9,00,000 equity shares and 11,00,000 6% Optionally Convertible Redeemable Preference Share. He further states that 10,04,182 preference shares were subsequently issued to Mr. Nitin Gupta without the knowledge of Petitioner, as, there were no such meetings conducted and passed an approval of such change in authorised capital of the company.

9. According to the Petitioner, the combined effect of the exclusion from management, non-disclosure of information, alleged diversion of funds, questionable transactions, alleged misuse of company assets and alleged manipulation of the share capital constitutes oppression of the Petitioner and mismanagement of the company's affairs.

Case of Respondents

10. The Petition is barred by limitation. Petitioner himself alleges that the transactions started in 2009 and the alleged acts of oppression began around 2011, whereas the Petition was filed only in 2018.

11. According to the Respondents, the Petitioner's grievance of exclusion from the affairs of the company is on the obvious ground that the Petitioner was residing outside India and was not in a position to participate in the day-to-day affairs of the company. They therefore contend that he cannot now complain that he was not involved in the daily management. Further, they state that from the time the Petitioner acquired shares in 2009 until the filing of the Petition in 2018, he did not raise any grievance against the company or the Respondents despite he being a Director till the date of filing of the present Company Petition.

12. As regards the allegation concerning fixed assets of approximately Rs. 4 crores, the Respondents deny that the assets were fictitious and were bought to personal use by the Respondents. The Respondents specifically deny that the company's car was gifted to Mr. Lalit Pophale, Chartered Accountant. They state that the car was purchased for the company for official purposes and continues to remain in the possession of Attitude Life Science Products Private Limited.

13. The Respondents deny the increase in authorised share capital and issue of preference shares, stating that the increase took place in 2010-11 and that the Petitioner's own shareholding had increased from 5,000 shares in January 2010 to 2,91,000 shares in August 2010, which, according to them, was not considered by the Petitioner's consultant. They further state that Mrs. Neena Nitin Gupta was never a shareholder and no shares were issued to her. According to the Respondents, the company required funds and had approached financial institutions for finance, and the increase in authorised share capital was undertaken for obtaining better finance.

14. Overall, the Respondents' defence is that the Petition is based on assumptions, hearsay and unsupported allegations rather than concrete documentary evidence. They deny diversion of funds, fictitious assets, personal use of company assets,

circular funding and illegal issue of shares, and repeatedly contend that the Petitioner is required to strictly prove each allegation.

Findings & Analysis

15. We heard the learned counsel for the parties, and also perused all the records available with this Tribunal.
16. At the outset, the facts relating to the Company's, shareholding and directorship are not in dispute, as the Petitioner holds 33% shares in the company and the Respondents hold the remaining shares. Both the Petitioners as well as Respondents were Directors of the Respondent Company though the majority thereof was in favour of Respondent on account of his wife also being a Director, however, it is admitted fact that the Petitioner had not participated in the day to day affairs of the Respondent Company. Further, there is no shareholder agreement between the parties in relation to their rights or obligations in relation to the affairs of the Respondent Company.

17. It is pertinent to note that the Petitioners' case is that several of the alleged acts commenced in or around 2009-2011, while the Petition was filed in 2018. The Petitioner has not placed sufficient material to satisfactorily explain why these alleged acts were not challenged at the relevant time while the Petitioner being a Director of the Respondent Company had access to the records of the Respondent Company. Nonetheless, the filing in relation to the increase in Authorised Capital, allotment of further Shares and Financial Affairs of the Respondent Company in the forms of its Audited Financial Statements were always available on the MCA Portal. Mere absence from India cannot, by itself, establish that every corporate act undertaken during the intervening period was oppressive. Accordingly, we are of the considered view that the Petitioners have failed to explain the reasons for his failure to exercise due diligence to discover the allotments of shares impugned in the present Petition, which could have been discovered by exercise of reasonable diligence.

18. The Petitioner has relied upon the purported report submitted by the external independent consultant engaged by him, however, the said Report is in the form of print of excel sheets and is neither signed nor does it name the consultant, his qualifications and the date of issuance thereof as well as the period of his inquiry. It is also pertinent to note that the Petitioner has himself stated at Para 16 of Petition that *in or around the Year 2012, he started noticing major lapses on the part of the Respondents*, however, he has not explained why he chose to approach this Tribunal in 2018 only. Further, the Petition nowhere states when the report from the consultant was obtained. Nonetheless, the observations recorded in those excel sheets indicate that the said consultant has access to the financial records of the Respondent Company thereby implying that the Petitioner also had access thereto. Accordingly, the allegation that the Petitioner was denied the books of accounts, statutory records and notices of Board Meetings and Annual General Meetings has no merit on the facts of this case.

19. The allegations founded on the basis of purported report comprising of excel sheets printouts relate to transactions entered into FY 2010-11 to FY 2012-13, which are well beyond period of three years from the date of filing of present petition. It is also stated in the excel sheets that some balances were carried forward to FY 2014-15, which also remains beyond a period of 3 years. As noted above, the petitioner had admittedly notice lapses on part of the Respondent in FY- 2011-12 itself, it can also not be inferred that petitioner could not have discovered the alleged fraudulent transactions flagged in purported expert report prior to discovery thereof in terms of said report. Further, the petitioner has not stated as to when the discovery by the expert was informed to him. Further, the claim of knowledge in relation to allotment of Optionally Convertible Redeemable Preference Share (OCRPs) in mid-2017 while perusing certain filings of the company of the MCA portal also does not seem to be tenable when the petitioner, being a director of the Respondent Company expected to be aware of annual obligations of a company in relation to a filing with MCA, could have discovered the said filing in relation to allotment taken place in 2011 well before.

20. It is relevant to note that Section 17 of Limitation Act requires the plaintiff to prove that he or she could not, with reasonable diligence, have discovered the fraud to claim running of limitation period from the date of discovery or knowledge of such fraud. As noted above, the financial transaction alleged to be nature of siphoning of fund by way of fictitious asset and circular movement were admittedly took place in FY 2009-10 to 2013-14 only.

21. Though, the Petitioner's allegations in relation to financial transactions are rejected on ground of limitation, however, it is noteworthy that the Respondents have also not dealt with factual aspects of those allegations by cogent explanation and have brushed aside those allegations summarily.

22. For an order under Sections 241 and 242 of the Companies Act, 2013, it is not sufficient to establish that the Petitioner was dissatisfied with the manner in which the Company was managed or that certain transactions appeared questionable to him. The Petitioner must establish conduct which is oppressive to him in his capacity as a member or conduct which is prejudicial to the interests of the Company, and the material placed before the Tribunal must be sufficient to justify the exercise of the jurisdiction under Section 242. The allegations must therefore be supported by reliable evidence and cannot rest merely on assumptions, apprehensions or an unsigned/undated report of unidentified expert.

23. Further, the allotment of OCRPs took place in 2011. Accordingly, all these cause of action falls beyond the period of limitation in the absence of specific pleadings or cogent evidence to demonstrate that these transactions came to knowledge of Petitioner lately or the petitioner, admittedly being a director till the date of filing of the present application having access to the books of accounts of the Respondent Company, could have discovered those transactions. The Petition also contains the allegation that the records were not provided, but there is no sufficient documentary material before us indicating that the Petitioner was denied access to the records. On the contrary, the access to the records of the

Respondent Company admittedly being available to the expert engaged by the petitioner speaks otherwise.

24. The Petition also contains the allegation that the notices for the general meeting or board meeting were not provided to him. It is noted that the Respondents have not placed on record any evidence demonstrating service of any such notice to the petitioner, while the Respondent are obligated to prove the service thereof by producing cogent evidence especially when the service of a notice is questioned by the noticee in order to discharge primary onus in relation thereto. The non-service of a notice of a meeting to the shareholder constitutes an act of oppression qua petitioner.

25. Vide order dated 28.06.2024, this Tribunal recorded that this Tribunal a valuer for determination of fair value of shares of the Respondent Company after observing that a petitioner is willing to resolve the dispute offering a one time settlement however, there was this agreement on the price of shares on the Respondent Company. Thereafter, it is noted that the said valuer could not conclude the valuation accordingly this Tribunal replaced him by another valuer vide order dated 29.11.2024. However, the Respondents are stated to have not provided requisite details to the valuer to conclude the valuation exercise and this was observed by this Tribunal on 12.09.2025 by issuing a show cause notice to the Respondent company and its directors as to why proceedings under the Contempt of Court Act by not initiated against them and it was informed by the respondent on 31.10.2025 that non-compliance happened on account on miscommunication on their part. Thereafter, this Tribunal vide order dated 09.01.2026 passed an order holding respondent guilty of contempt and granted them 2 weeks time to purge the contempt. Pursuant thereto the Respondents, provided the detail to the valuer as recorded in order dated 20.02.2026. however, despite numerous sharings it was noted that the valuer has not filed the report, accordingly, this Tribunal asked the Petitioner vide order dated 12.06.2026 to argue the matter on 19.06.2026 on merit in case the valuer still fails to submit the

report. Finally, on 24.07.2026 after observing the failure of valuer to tender his report, this Tribunal discharged the said valuer.

26. In case of ***Tata Consultancy Services Limited vs Cyrus Investments Pvt Ltd. AIRONLINE 2021 SC 179,*** the Hon'ble Supreme Court held that the first just & equitable ground is "functional dead lock" and the second is where a company is a corporate quasi partnership and an irretrievable breakdown in trust and confidence between the participating members has taken place. It further held that where there is a complete functional dead lock, winding up may be ordered regardless whether the company is a quasi partnership or not. But in the second type of cases, a breakdown of trust and confidence is enough even if there is not a complete functional dead lock.

27. In the present case the petitioner had invested in the respondent company reposing trust and confidence in respondent no. 2's assurances and was allotted to 1/3 share capital thereof along with a seat on the board of Respondent Company. As is noted from the pleadings the management and control of the respondent company remained with Respondent No. 2 and the Petitioner was not taking part in its affairs, however, the petitioner remained entitled to 1/3 share in the profits of respondent company.

28. In case of ***M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja, reported in (2008) 143 com cases 97 (SC),*** it is held that –

> *"20. Sections 397 and 398 of the Act empower the Company Law Board to remove oppression and mismanagement. If the consequences of refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the company, would still the Company Law Board be powerless to pass appropriate orders is the question.*
>
> *If a literal interpretation to the provisions of Section 397 or 398 is taken recourse to, may be that would be the consequence. But jurisdiction of the Company Law Board having been couched in wide terms and as diverse reliefs can be granted by it to keep the company functioning; is it not*

desirable to pass an order which for all intent and purport would be beneficial to the company itself and the majority of the members? A court of law can hardly satisfy all the litigants before it. This, however, by itself would not mean that the Company Law Board would refuse to exercise its jurisdiction, although the statute confers such a power on it.

21. It is now a well settled principle of law that the Courts should lean in favour of such construction of statute whereby its jurisdiction is retained enabling it to mould the relief, subject of course, to the applicability of law in the fact situation obtaining in each case.

In Pearson Education Inc. (formerly Prentice Hall Inc.) Vs. Prentice Hall India (P) Ltd. and Ors. [134 (2006) DLT 450], as regards the jurisdiction of the Company Law Board and the High Court under Sections 397/398 and 402, a learned single judge of the Delhi High Court held:

"Jurisdiction of the CLB (and ultimately of this Court in appeal) under Sections 397/398 and 402 is much wider and direction can be given even contrary to the provisions of the Articles of Association. It has even right to terminate, set aside or modify the contractual arrangement between the company and any person [see Section 402(d) and (e)]. Section 397 specifically provides that once the oppression is established, the Court may, with a view to bringing to an end the matters complained of, make an order as it thinks fit. Thus, the Court has ample power to pass such orders as it thinks fit to render justice and such an order has to be reasonable. It is also an accepted principle that "just and equitable" provision in Section 402(g) is an equitable supplement to the common law of the company to be found in its Memorandum and Articles of Association."

29. In view thereof, we consider it appropriate to require the Respondent Nos. 2 and 3, jointly or severally or through their nominee or through Respondent Company, to buy out the shares of the petitioner at the book value of Respondent Company as on 31.03.2026 as adjusted further for the difference in the fair value of land &

building as compared to its book value. The said fair value shall be determined by the independent valuer, to be engaged within 15 days from the date of this order, and the valuation report shall be submitted within 30 days after appointment.

30. The consideration so determined shall be paid within 30 days from the date of receipt of the Valuation Report and Petitioner shall tender share transfer deed along with share Certificate to Respondent no.2 forthwith on the notification of payment being ready. In case Petitioner fails to tender share transfer deed along with share Certificate to Respondent no.2 within 7 days from the date of notification, Respondent no.2 shall make payment within 2 days thereafter, and shall be entitled to lodge these shares for transfer in his or his nominee names without any further act and Respondent Company shall make necessary entries in the Register of Members accordingly.

31. The parties shall be, at liberty, to file appropriate application if there is any breach of this order.

32. In terms of the above, **CP 3196 of 2018** is disposed of. Any Application pending thereunder shall also disposed of. Any interim order passed by this tribunal in terms of these petitions shall stand vacated.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)

Vaishnavi B