NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.202

Comp.App/5(MP)2021
in
(MP) CP 10 of 2020

Order under Section 244(1) of Co. Act,2013

IN THE MATTER OF:

Prakash Sharma **.....Applicant**
v/s
ROC Gwalior & Ors **.....Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 26/10/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

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NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

Comp. App/5(MP)2021

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(MP) CP 10 of 2020

[An Application under Section 244(1) of Co. Act, 2013]

In the matter of:

Prakash Sharma

Residing at 1101, Near Shastri Bridge, Napier Town, Jabalpur, 482001. ... Applicant

Versus

Registrar of Companies,

Mr. Rajpal Singh (ROC Gwalior),

3d Floor 'A' Block, Sanjay Complex Jayendraganj, Gwalior (M.P.)

Ph. No.-075L-232L9O7

Email ID-roc.qwalior@mca.qov. in ...Respondent No. 1

M/s See Media Services Pvt. Ltd.,

Through its Managing Director

Office at Plot No.16, Malaviya Nagar, Bhopal (M.P.) 462023 ...Respondent No. 2

Mr. Sunil Kapoor

residing at E-314A, Arera Colony Bhopal (M.P.) ...Respondent No. 3

Mr. Saraswati Prasad Tripathi ...Respondent No. 4

Residing at Plot No. 45-46, Sangrila Society, Hoshangabad Road, Bhopal (M.P.)

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)

Hon'ble Shri Man Mohan Gupta Member (T)

PRESENT:

For the Applicant: Mr. Pratik Thakkar, Adv (Online)

For the Respondent: Mr. Vinit Nagar, PCS (Physical)

ORDER

Delivered on: 26.10.2026

1. Application and relief sought

1. The present application has been filed by the Applicant, Mr. Prakash Sharma, seeking waiver of the eligibility requirement prescribed under clause (a) of sub-section (1) of Section 244 of the Companies Act, 2013, to enable him to pursue Company Petition No. 10 of 2020 filed under Section 241 of the Companies Act, 2013.

2. The Applicant seeks waiver on the ground that he was a promoter and director of Respondent No. 2 Company and claims that he and his group held approximately 50% of its equity share capital. According to him, pursuant to a Memorandum of Understanding dated 17.12.2019, his shareholding was transferred without receipt of the entire agreed consideration, resulting in his equity shareholding

being reduced to nil. He has also asserted that preference shares were issued to him by the Company.

2. Submissions of the Applicant

3. The Applicant states that he was associated with Respondent No. 2, M/s See Media Services Private Limited, as a promoter and director since its incorporation on 02.02.2007. He submits that he, along with his group, held approximately 50% of the equity shares of the Company.

4. The Applicant states that he entered into an MOU dated 17.12.2019 with Respondent No. 3, Mr. Sunil Kapoor, for transfer of his 50% shareholding for a total consideration of ₹5,75,00,000/-, including 1,90,000 shares of Mr. Arvind Khokhar. According to the Applicant, he transferred 80,00,000 shares pursuant to the MOU, but the entire agreed consideration was not paid.

5. The Applicant submits that the MOU contemplated payment of the agreed consideration within a stipulated period and was valid up to 31.03.2020. He alleges that Respondent No. 3 failed to comply with the terms of the MOU and that the transfer of shares, without payment of the entire consideration, was wrongful. He accordingly contends that his shareholding was reduced to nil by way of oppression. MOU dated 17.12.2019. The applicant submits that MOU dated 17.12.2019 was to be executed in time bound manner

and was valid only till 31.03.2020, the respondent no.3 has thus, breached the terms and conditions of the MOU dated 17.12.2019 making the transfer of shares without receipt of consideration to be illegal and wrongfully transferred. Thus, in the present circumstances, interference of this Hon'ble Tribunal is required to reverse such transfer of shareholding on account of breach of the MOU dated 17.12.2019.

6. The Applicant has further asserted that 6,68,750 cumulative redeemable preference shares of ₹10/- each were issued to him by Respondent No. 2. On this basis, he submits that he satisfies the requirements of Section 244 of the Companies Act, 2013, and has sought waiver by way of the present application.

3. Submissions of the Respondents

7. Respondent No. 3, Mr. Sunil Kapoor, has filed an affidavit in reply on behalf of Respondent Nos. 2 and 3, opposing the relief sought in the present application for waiver under Section 244(1)(a) of the Companies Act, 2013. At the outset, the Respondents deny the allegations and averments made in the application, except those specifically admitted by them.

8. It is contended that **Company Petition No. 10 of 2020**, filed under Section 241 of the Companies Act, 2013, is not maintainable in law and that the present application seeking waiver cannot be considered independently of the question

whether the Applicant satisfies the statutory requirement of membership. It is further stated that no averment or allegation in the application should be treated as admitted merely because it has not been specifically dealt with, and reserve their right to place further material before the Tribunal, if required.

9. The principal objection raised by the Respondents is that the Applicant was not holding any equity shares of Respondent No. 2 Company on the date of filing Company Petition No. 10 of 2020. According to the Respondents, the Applicant had already transferred the entire equity shareholding held by him in the Company before filing the petition. They contend that 64,59,732 equity shares were transferred in favour of Respondent No. 3, Mr. Sunil Kapoor, and the remaining 15,40,268 equity shares standing in the Applicant's name were transferred in favour of Shruti Media Services Private Limited. In support of this contention, the Respondents rely upon the register of share transfers annexed as Annexure-1 and the corresponding share-transfer forms in Form SH-4 annexed as Annexure-2 to their reply.

10. The Respondents further contend that the share transfers were duly recorded in the Company's records and that the relevant corporate filings were made in connection with the transaction. They rely upon the records of the MCA Registry, including the relevant SRN details and Form MGT-14, which,

according to them, was digitally signed by the Applicant after verification of the documents. The Respondents have annexed the relevant filing and supporting documents as Annexure-3 to their reply. On this basis, they contend that the Applicant cannot disregard the recorded transfers and continue to claim the status of an equity shareholder of the Company.

11. With regard to the consideration payable against the share transfers, the Respondents assert that the Applicant has received the consideration for the shares transferred by him. They rely upon the certified copy of the ledger accounts of the Applicant maintained in the books of Respondent No. 2 Company, which has been certified by the Chartered Accountant and annexed as Annexure-4. The Respondents contend that the ledger entries and the accompanying records support their case regarding payment of consideration and that the Applicant's allegation of non-payment does not establish that the transfers were invalid. They accordingly dispute the Applicant's contention that his shareholding was wrongfully transferred without receipt of consideration.

12. The Respondents also dispute the Applicant's claim that he holds preference shares in Respondent No. 2 Company. They contend that the issue of preference shares is outside the scope of the Company's Memorandum of Association and that

the Company has not issued any preference shares at any point of time. In support of this contention, they rely upon the Company's Memorandum of Association, annexed as Annexure-5 to their reply, and submit that the Applicant's claim to be a preference shareholder is contrary to the Company's constitutional documents and records.

13. The Respondents specifically object to the Applicant's reliance upon the alleged preference-share certificate. They state that, although the Applicant has referred to a preference-share certificate as Annexure III to the application, no such annexure was attached to the original application, as per their case. They further contend that no preference shares were ever issued to the Applicant and that no return of allotment in respect of the alleged preference shares was filed with the MCA Registry. On these grounds, the Respondents dispute the genuineness and legal effect of the certificate relied upon by the Applicant and deny that it establishes his status as a member of the Company.

14. The Respondents submit that the Applicant is attempting to rely upon an alleged preference-share holding to overcome the objection concerning his equity shareholding. They contend that the Applicant is required to establish his status as a member of the Company before the Tribunal can consider the question of waiver under Section 244(1)(a) of the Companies Act, 2013. According to them, the issue of

membership is a threshold requirement and cannot be bypassed merely because the Applicant has raised allegations of oppression and mismanagement in the company petition.

15. The Respondents further contend that the Tribunal must first determine whether the Applicant is a member of the Company before considering the merits of Company Petition No. 10 of 2020 or granting waiver of the eligibility requirement. They submit that, if the Applicant is not a member, the application seeking waiver deserves to be rejected. According to the Respondents, the question of waiver cannot be decided in a manner that overlooks the statutory requirement of membership under Section 244 of the Companies Act, 2013.

16. In support of their contention, the Respondents rely upon the judgment of the Hon'ble Gujarat High Court in ***Gulabrai Kalidas Naik & Others v. Laxmidas Lallubhai Patel & Others.*** As understood from the reply, the Respondents rely upon the said decision for the proposition that where a person seeks rectification of the register of members to establish or restore membership, such a dispute must be resolved before that person can maintain a petition for oppression and mismanagement in the capacity of a member. They contend that, until the Applicant establishes the requisite membership, he cannot maintain the company petition under Section 241 of the Act.

17. On the basis of the aforesaid pleadings and documents, the Respondents maintain that the Applicant had transferred his equity shares before filing the company petition, that the transfers are supported by the Company's records, and that the consideration was duly recorded in the relevant accounts. They further deny that the Applicant holds preference shares in the Company and dispute the certificate relied upon by him. Accordingly, they oppose the grant of waiver under Section 244(1)(a) of the Companies Act, 2013 and seek rejection of the present application.

4. Rejoinder of the Applicant

18. In rejoinder, the Applicant has objected to the reply filed by Respondent Nos. 2 and 3 on 01.10.2024, contending that the pleadings in the application had already been recorded as complete by orders dated 09.06.2021, 24.12.2021, 18.02.2022 and 16.06.2022. He submits that the Respondents had not obtained any order recalling or modifying the earlier procedural directions.

19. On merits, the Applicant reiterates that the MOU dated 17.12.2019 stipulated a total consideration of 5,75,00,000/- , payable in instalments comprising ₹ 90,00,000/- as the first instalment, ₹ 2,90,00,000/- as the next payment and the balance amount of ₹1,95,00,000/- on or before 31.03.2020.

20. The Applicant points out that the Respondents have produced a certificate of their Chartered Accountant reflecting payments of ₹91,79,997/- and ₹3,85,00,000/-, aggregating to ₹4,76,79,997/-. According to the Applicant, these figures demonstrate that the entire consideration stipulated under the MOU was not paid.

21. The Applicant further submits that he had handed over signed share-transfer forms and share certificates pursuant to the MOU, but the Respondents used the documents to transfer his shareholding without payment of the entire consideration. He maintains that the resulting removal of his name from the shareholding records was wrongful.

22. The Applicant has also reiterated his claim regarding the preference shares and has placed on record a copy of the preference-share certificate as Annexure R/3 to the rejoinder. He disputes the Respondents' contention that he ceased to have any membership rights in the Company.

5. Analysis and findings

23. We have considered the application seeking waiver of the requirements prescribed under Section 244(1)(a) of the Companies Act, 2013, the reply filed by Respondent Nos. 2 and 3, the rejoinder filed by the Applicant and the documents placed on record.

24. The Applicant's case is that he was a promoter and shareholder of Respondent No. 2 Company and agreed, under the Memorandum of Understanding dated 17.12.2019, to transfer his shareholding for a total consideration of ₹5,75,00,000/-. He alleges that, although the share-transfer documents were handed over pursuant to the MOU, the entire agreed consideration was not paid and his shareholding was consequently reduced to nil. The Respondents, on the other hand, rely upon the share-transfer forms, register of transfers, corporate filings and ledger accounts to contend that the transfers were effected and the Applicant received consideration. They also dispute the Applicant's claim concerning the alleged preference shares.

25. The Respondents have raised a substantial objection regarding the Applicant's present membership in the Company. In support of their contention, they have placed reliance upon documentary material concerning the transfers. The Applicant does not merely rely upon his former shareholding; his case is that the transfers were undertaken pursuant to the MOU and that the agreed terms were not fulfilled. The effect of the MOU, the circumstances in which the transfer documents were executed and acted upon, and the legal consequences of the alleged non-payment are matters arising from the rival pleadings.

26. In ***Gulabrai Kalidas Naik v. Laxmidas Lallubhai Patel, (1978) 48 Comp Cas 438 (Guj.), the Gujarat High Court*** considered a composite petition seeking rectification of the register of members and relief under Sections 397 and 398 of the Companies Act, 1956, where the petitioners' membership was disputed. The decision highlights the significance of resolving a genuine dispute concerning membership. However, the facts and procedural context of that case must be borne in mind while applying its principle to the present proceedings.

27. In ***Manoj Bathla v. Vishwanath Bathla, Company Appeal (AT) No. 399 of 2018, decided on 30.04.2019***, the NCLAT upheld the grant of waiver in the context of allegations concerning the reduction of shareholding through oppressive acts. The judgment records so:

"We are convinced that refusal to grant waiver would amount to adopting of a blood thirsty approach to a case where relief is sought on the allegations of oppression manifesting in the form of manipulation, fabrication and preparation of false record. When the status of Respondent No.1 being a shareholder with 25% shareholding at the time of incorporation of the Company and also being one of the founding Directors of the Company is admitted, it cannot be contended that he ceased to be a "member" upon reduction of his share capital

and that too when the transfer of shareholding is alleged to be clandestine and product of fabrication and forgery."

28. The factual position in the present matter is distinguishable because the Respondents have produced share-transfer forms and other corporate records. Nevertheless, the decision demonstrates that an allegation that shareholding has been reduced through oppressive acts must be considered in the context of the particular facts and material on record.

29. The governing principle concerning the scope of the waiver inquiry is explained in ***Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd., Company Appeals (AT) Nos. 133 and 139 of 2017, decided on 21.09.2017***. The NCLAT held that, while considering an application for waiver under the proviso to Section 244(1), the Tribunal is not required to deliberate upon or decide the merits of the proposed petition under Section 241. The waiver proceedings cannot be converted into a trial of the allegations that are to be adjudicated in the main petition.

30. Applying the above principles, we are of the view that the competing claims concerning the transfer of shares, the consideration payable under the MOU, the effect of the documents relied upon by the Respondents and the Applicant's claim relating to preference shares should not be conclusively determined in the present waiver application. The documents placed on record by the Respondents are

relevant and shall be considered at the appropriate stage; equally, the Applicant's allegations concerning the circumstances of the transfers cannot be finally adjudicated in these proceedings.

31. Having regard to the Applicant's pleaded history as a promoter and shareholder, the MOU relied upon by him, and his specific allegation that his shareholding was reduced in the course of the transaction forming the basis of his grievances, we consider it appropriate to grant waiver of the threshold requirement under Section 244(1)(a), for the purpose of enabling the Applicant to pursue the company petition under Section 241. This conclusion is confined to the question of waiver and shall not be construed as a finding on the validity of the transfers, the Applicant's present membership, the alleged outstanding consideration or the merits of the allegations of oppression and mismanagement.

32. Accordingly, the disputed questions concerning the validity and effect of the share transfers, the terms and performance of the MOU dated 17.12.2019, the consideration allegedly remaining unpaid, the claim relating to preference shares, the question of membership and the allegations under Section 241 shall remain open for consideration and shall be decided in the main company petition, in accordance with law and on the basis of the pleadings and evidence placed on

record. No observation made in this order shall prejudice the rights and contentions of either party on those issues.

ORDER

33. The present application seeking waiver under the proviso to Section 244(1) of the Companies Act, 2013, is allowed.

34. The Applicant is granted waiver of the requirement prescribed under Section 244(1)(a) of the Companies Act, 2013, for the purpose of pursuing Company Petition No. 10 of 2020 under Section 241 of the Act.

35. It is clarified that no final finding is being recorded in the present application concerning the Applicant's membership in the Company, the validity or effect of the share transfers, the terms or performance of the MOU dated 17.12.2019, the alleged outstanding consideration, the claim relating to preference shares, or the merits of the allegations of oppression and mismanagement. All these issues shall be considered and decided in the main company petition, in accordance with law.

36. The present application stands **allowed and disposed of** in the above terms.

37. Further, the **Company Petition (Companies Act)/10 (MP) 2020 is listed for hearing on 17.12.2026**

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Chandni – L.R.A