



ATLAS CYCLES (HARYANA) LIMITED

Registered Office : Industrial Area, Atlas Road, Sonapat-131 001, (Haryana) India.
Corporate Identity Number L35923HR1950PLC001614

Date: 07th August, 2023

The Manager, Capital Market (Listing)
National Stock Exchange of India Ltd.
Exchange Plaza,
Bandra-Kurla Complex
Bandra (E)
MUMBAI – 400051
FAX NO. 022-26598237/38

The Manager (Listing)
BSE Ltd.
Phiroze Jeejeebhoy Towers,
Dalal Street, Fort,
MUMBAI – 400001
FAX NO. 022-22721919/2037/2039/ 2041/2061

SUBJECT: - NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT), PRINCIPAL BENCH, NEW DELHI, ORDER DATED 02.08.2023.

Dear Sir/Madam,

Please find enclosed herewith order dated 02.08.2023 of NCLAT, Principal Bench New Delhi uploaded on NCLAT website today. National Company Law Tribunal (NCLT) order dated 06.12.2022 has been set aside by NCLAT. Kindly take this in your record and oblige.

Thanking you,

For ATLAS CYCLES (HARYANA) LIMITED

RAKESH
COMPANY SECRETARY



**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) No. 229 of 2022

IN THE MATTER OF:

I.D. Chugh & Ors.

...Appellants

Versus

Vikram Kapur & Ors.

...Respondents

Present:

For Appellant: Mr. Arjun Syal, Mr. Raghuveer Kapur, Advocates

For Respondent: Mr. Manish Jain, Divya Sharma, Siddhant Jain, Advocates
for Applicant in I.A. 3451 of 2023

Mr. Manusumyer Singh Mr. Shravan Chandrashekhar,
Advocates for R1 and R2

Ms. Amrita Tonk, Advocates for 7 to 10

Mr. Divij Kumar & Varun Tandon, Advocate for R11 to R15

Mr. Virender Ganda, Sr. Adv. with Mr. SP Singh Chawla,
Aditya, Mr. Ayandeb Mitra, Rohan S. Nandy, Advocates for
R1

With

Company Appeal (AT) No. 13 of 2023

IN THE MATTER OF:

Girish Kapur & Ors.

...Appellants

Versus

Atlas Cycles (Haryana) Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Divij Kumar, Mr. Varun Tandon, Advocates

For Respondent: Mr. Manusumyer Singh Mr. Shravan
Chandrashekhar, Advocates for R2 and R3

Ms. Amrita Tonk, Advocates for 10 to 13

Mr. Virender Ganda, Sr. Adv. with Mr. SP Singh
Chawla, Aditya, Mr. Ayandeb Mitra, Rohan S. Nandy,
Advocates for R1

With

Company Appeal (AT) No. 14 of 2023

IN THE MATTER OF:

Sanjay Kapur & Ors.

...Appellants

Versus

Atlas Cycles (Haryana) Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. P. Nagesh, Sr. Adv. with Ms. Amrita Tonk, Mr. Shouryabitya, Mr. Akshay Sharma, Advocates

For Respondent: Mr. Divij Kumar & Varun Tandon, Advocate for R11 to R15
Mr. Manusumyer Singh Mr. Shravan Chandrashekhar, Advocates for R2 and R3
Mr. Virender Ganda, Sr. Adv. with Mr. SP Singh Chawla, Aditya, Mr. Ayandeb Mitra, Rohan S. Nandy, Advocates for R1

With

Company Appeal (AT) No. 23 of 2023

IN THE MATTER OF:

Vikram Kapur & Anr.

...Appellants

Versus

Atlas Cycles (Haryana) Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Manusumyer Singh Mr. Shravan Chandrashekhar, Advocates

For Respondent: Ms. Amrita Tonk, Advocates for R3 to 6
Mr. Divij Kumar & Varun Tandon, Advocate for R7 to R11
Mr. Virender Ganda, Sr. Adv. with Mr. SP Singh Chawla, Aditya, Mr. Ayandeb Mitra, Rohan S. Nandy, Advocates for R1

ORDER

Per: Justice Rakesh Kumar Jain: (Oral)

02.08.2023: This order shall dispose of four appeals i.e. CA (AT) No. 299 of 2022, CA (AT) No. 13 of 2023, CA (AT) No. 14 of 2023 and CA (AT) No. 23 of 2023 as all these appeals have been filed against the common impugned order dated 06.12.2022.

2. In brief, Company Petition No. 18/ND/2015 was filed by two shareholders, namely, Vikram Kapur and Angad Kapur against the Company (Atlas Cycle (Haryana) Limited), Respondent No. 2-11 & 18 are the shareholders and Respondent No. 12 – 17 are the directors. This petition is filed, invoking Sections 397, 398, 402, 403 of the Companies Act, 1956 (in short 'the Act, 1956') r/w Regulation 44 of the Company Law Board Regulations, 1991 with the following prayers:-

“a. Supersede the Board and appoint and administrator instead of the Board with a direction to constitute a committee of management with due representation of the petitioners to conduct the affairs of the Respondent No.1 Company.

b. Declare that the Petitioners have independent management and control of the Sonapat Unit in pursuant to the memorandum of understanding signed and executed by the members of the Kapur family and permanently restrain the Board or any of the Respondents herein from acting in manner whatsoever which is likely to impede, obstruct, interrupt or interfere with Petitioners' independent control and management of Sonapat Unit.

c. Pass appropriate orders recommending the Demerger of the 'Sonapat Unit' as separate company with all its assets liabilities, obligations and rights, claims, interest, entitlements and properties along with 1/3 requisite shareholders of Respondent No.1 Company in exercise of its power under Section 402 of the Companies Act, 1956.

d. Direct the Respondents to adequately reimburse the Petitioner with respect to the business diverted from the Respondent No. 1 Company; or direct the Respondent No. 2 to bring back the business or money equivalent to that diverted business of the Respondent No. 1 Company;

e. To pass an order awarding the costs of the present litigation to the Petitioner;

f. To pass such other /further orders/directions which this Hon'ble Board may deemfit and proper in the facts and circumstances of the present case.”

3. The aforesaid petition was dismissed by the Company Law Board, New Delhi Bench, New Delhi vide its order dated 27.03.2015, however, the said

order dated 27.03.2015 was challenged by way of CAPP No. 21 of 2015 before the Hon'ble Punjab and Haryana High Court, Chandigarh, which was allowed vide its order dated 20.04.2015. The relevant part of the order dated 20.04.2015, passed by the Hon'ble High Court is reproduced as under;-

"I have heard Learned Counsel for the parties and appraised the impugned order. The Company Law Board, while declining the interim relief, has also dismissed the main petition.

It is a matter of record that the respondents had not filed counter/defence or any documents in pursuance to the petition filed under Section 397, 399 and 402 of the Companies Act, 1956. The Company Law Board ought not to have dismissed the petition on merits while declining the interim relief to the petitioner. It appears that the matter has been decided in utter haste without commenting upon the merits of the matter/petition.

Without adverting to the merits and de-merits of the matter, much less the plea/counter pleas of the parties to this lis deem it appropriate to set aside the impugned order and remand the matter back to the Company Law Board by restoring the appeal to its original number.

Parties are directed to appear before the Company Law Board on 28.04.2015.

The Petitioner shall be at liberty to pray for interim relief afresh. The aforesaid order of mine shall not construe as expression on the merits/de-merits of the matter.

With the aforementioned observations the appeal stands disposed of"

4. As a consequence of the aforesaid order, the main petition i.e. CP No. 18 of 2015 was restored. In the meantime, vide notification no. S.O. 1934(E) dated 01.06.2016 Section 434 of Companies Act, 2013 (in short 'the Act, 2013) came into force and in terms of Section 434 (1)(a) of the Act, 2013 the aforesaid case was transferred to the National Company Law Tribunal, New Delhi (in short 'Tribunal') bearing the same case number.

5. While this petition was pending before the Company Law Board, the Respondent No. 1 & 12 to 16 raised an issue regarding its maintainability by filing an application bearing CA No. 272 of 2016 under Section 403 of the Act

r/w Regulation 44 of the Company Law Board Regulations, 1991 in which the following prayer was made:-

- “a) Frame the preliminary issue about the validity of consents given by the consenting shareholders and maintainability of the petition in term of Section 399 of the Companies Act, 1956; treat the same as a preliminary issue and adjudicate upon the same before hearing the petition on merits;
b) Pass such other and further order(s) as the Hon’ble Board may deem fit and proper in the facts and circumstances of the present case.”

6. On the aforesaid application i.e. 272 of 2016, an order was passed by the Company Law Board on 24.02.2016 which read as under:-

“Application shall be taken up with the main case.
The date of argument fixed for tomorrow shall stand cancelled.
List on 22.04.2016 at 10.30AM.”

7. Thereafter, while the matter was pending before the Tribunal, an application bearing I.A. No. 533 of 2020 was filed by the original Petitioners (Vikram Kapur and Angad Kapur) under Section 244 of the Act, 2013 r/w Rule 11 of NCLT, Rules, 2016 (in short ‘Rules’) for seeking waiver of the qualification mandated in Section 244 of the Act, 2013. It is worthwhile to mention some averments made in this application which read as under:-

“11. That without prejudice to the above, the Petitioner No. 1 i.e. Mr. Vikram Kapur holds 66,194 Equity Shares constituting 2.04% of the total shareholding and Petitioner No. 2 holds 25,900 Equity Shares constituting 0.80% of the total shareholding. That together both the Petitioners holds 2.84% of the total shareholding of the Respondent No. 1 Company which falls short of minimum eligibility criteria of 10% shareholding as stipulated under Section 399 of the Companies Act, 1956 and Clause (a) of Sub-Section (1) of Section 244 of the Companies Act, 2013 for filing petition under Section 241-242 of the Act. However, under Section 399 the Petitioner has the necessary and valid consents. But to ensure that no injustice is caused on technical grounds and the Petitioner’s claims that the balance of convenience is in their favour and irreparable injury will be caused to the Petitioners in the event this Bench does not intervene, the Petitioners seeks a waiver of the requirements as

stipulated under Clause (a) of Sub-Section (1) of Section 244 of the Companies Act, 2013. A copy of the chart depicting the shareholding pattern of the members of the Kapur Family is already annexed to the rejoinder to the company petition as Annexure A.”

8. There was only one prayer made in this application which requires to be mentioned and read as under:-

“(a) Grant waiver to the Petitioners in order to enable them to file application under Section 241 of the Companies Act, 2013.”

9. Counsel for the Appellant has submitted that on the one hand the application i.e. 272 of 2016 was kept to be decided alongwith main petition regarding preliminary issue raised by the Respondent No. 1 & 12 to 16 but not decided and on the other hand the application bearing 533 of 2020 filed for seeking waiver has been decided without giving any reasons much less cogent. It is further submitted that until and unless waiver is granted in terms of Section 244 of the Act, the application filed under Section 241 r/w 242 of the Act was not maintainable. It is further submitted that application no. 533 of 2020 was filed deliberately by the original applicants during the pendency of the application bearing 272 of 2016 because they were apprehending that they may not cross the threshold of 100 members as provided in Section 399 of the Act, 1956. In this regard, he has relied upon a decision of this Tribunal rendered in the case of *Cyrus Investments Pvt. Ltd. & Anr. Vs. Tata Sons Ltd. & Ors.* 2017 SCC Online NCLAT 261 and pressed Paragraphs 148, 150 and 151. The said paras are reproduced as under:-

“148. Now there is a clear departure from earlier provision i.e. sub-section (4) of Section 399 whereunder the Central Government was empowered to permit the ineligible member(s) to file an application for ‘oppression and mismanagement’ by its executive power. Under proviso to sub-section (1) of Section 244 now the Tribunal is

required to decide the question whether application merits 'waiver' of all or any of the requirements as specified in clauses (a) and (b) of sub-section (1) of Section 244 to enable such member(s) to file application under Section 241. Such order of 'waiver' being judicial in nature, cannot be passed by Tribunal, in a capricious or arbitrary manner and can be passed only by a speaking and reasoned order after notice to the (proposed) respondent(s). The basic principle of justice delivery system is that a court or a Tribunal while passing an order is not only required to give good reason based on record/evidence but also required to show that after being satisfied itself the Court/Tribunal has passed such order. To form an opinion as to whether the application merits waiver, the Tribunal is not only required to form its opinion objectively, but also required to satisfy itself on the basis of pleadings/evidence on record as to whether the proposed application under Section 241 merits consideration.

150. The Tribunal is not required to decide merit of (proposed) application under Section 241, but required to record grounds to suggest that the applicants have made out some exceptional case for waiver of all or of any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244. Such opinion required to be formed on the basis of the (proposed) application under Section 241 and to form opinion whether allegation pertains to 'oppression and mismanagement' of the company or its members. The merit cannot be decided till the Tribunal waives the requirement and enable the members to file application under Section 241.

151. Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits 'waiver' of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) Section 244:-

(i) Whether the applicants are member(s) of the company in question? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.

(ii) Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to 'oppression and mismanagement' of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors.

(iii) Whether similar allegation of 'oppression and mismanagement', was earlier made by any other member and stand decided and concluded?

(iv) Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241 etc.?"

10. They have also relied upon another Judgment of this Tribunal rendered in the case of Golden Cashew products Pvt. Ltd. Vs. Ramaiya Pillai Thirumurugan, 2021 SCC Online NCLAT 5999.

11. On the other hand, Counsel for the Respondents have submitted that the contents of the main application has to be considered at the time when it was filed and the subsequent events are not to be seen, in this regard, Counsel for the Respondents has relied upon three judgments, namely, Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageshwara Rao, (1955) 2 SCR 1066, LRMK Narayanan Vs. The Puthuthotam Estate (1943) Limited decided on 07th November, 1991 and Bhagwati Developers Pvt. Ltd. Vs. Peerless General Finance and Investment Ltd., 2013 SCC Online Cal 10000. It is also submitted that Respondents had also filed various applications alongwith application no. 272 of 2016, those applications were decided from time to time and the application regarding the maintainability of the main petition was never pressed, therefore, they have, in a manner acquiesced the maintainability of the application. It is further submitted that the application no. 533 of 2020 has been filed as a pre-cautionary measure while the application no. 272 of 2016 was pending which was stated to be not pressed during the course of arguments.

12. We have heard Counsel for the parties and perused the record with their able assistance.

13. The facts are not much in dispute because these are borne out from the record itself. However, it would be relevant to refer to Section 399 of the Act, 1956 which is reproduced as under:-

“399. Right to apply under section 397 and 398.

(1) The following members of a company shall have the right to apply under section 397 or 398:-

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to, the 1 Company Law Board] under section 397 or 398, notwithstanding that the requirements of clause (a) or (b), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the 1 Company Law Board] dealing with the application, may order such member or members to pay to any other person or persons who are parties to the application.”

14. A reading of the aforesaid provision, much less Section 399(4) would show that for the purpose of maintaining the petition under Section 399(1)(a)(b) of the Act, 1956, the Central Government was given the power to form an opinion in this regard as to whether it is just and equitable to do so.

15. In the application bearing 272 of 2016, the applicants therein (Respondent No. 1 & 12 to 16) had precisely raised this issue about the

maintainability of the application filed by the original applicants, however, in its wisdom the Ld. CLB, as it was then, kept this application to be decided as a preliminary issue with the main petition itself and it is not recorded in any order that it was not pressed.

16. Subsequently, after the main petition was transferred to the Tribunal, the application under Section 244 was filed. Sections 241, 242 and 244 of the Act, 2013 are also reproduced 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 companys 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.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

[Provided that the applicants under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.]

(3) Where in the opinion of the Central Government there exist circumstances suggesting that--

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty

of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principle or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to default its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be jointed as a respondent to the application.

(5) Every application under sub-section (3)

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure (5 of 1908), for the signature and verification of a plaint in a suit by the Central Government.]

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.

(2) Without prejudice to the generality of the powers under subsection (1), an order under that subsection may provide for--

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not respondent is a fit and proper person to hold the office of director or any other officer connected with the conduct and management of any company.]

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be

punishable ^{2***} with fine which shall not be less than twenty-five thousand rupees but which may extend to ³[one lakh rupees].

244. Right to apply under section 241.—

(1) The following members of a company shall have the right to apply under section 241, namely:--

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.--For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

17. It is categorically provided in Section 244 proviso that the Tribunal can waive all or any of the requirements specified in clause (a) or clause (b) of Section 244 to enable the members to apply under Section 241. Meaning thereby, if the conditions in Clause 244(a) and 244 (b) are not waived and the Applicant is not qualified so far as condition enumerated in Section 244(1)(a)(b) are concerned then the application itself would not be maintainable and the Tribunal cannot proceed with it for the purpose of taking it to any conclusion. It appears that original applicants sensed that it would be in their interest to seek waiver under Section 244 of the Act,

therefore, application bearing 533 of 2020 was filed during the pendency of the main application. In the said application, the applicants of application bearing 272 of 2016, who have raised the issue regarding the maintainability of the application even under Section 399 of the Act, 1956, informed the Tribunal that they have not been given any opportunity to file reply to the application and no notice was given. It is submitted that this fact has been recorded in the impugned order but still the Tribunal proceeded with it to hear only the Petitioners and since there was no reply on record on behalf of the Respondent No. 1, 12, 14 to 16, decided the application observing that it tantamount to deemed waiver.

18. In this regard, we may refer to a decision of this Tribunal in the case of *Cyrus Investments Pvt. Ltd. & Anr. (Supra)* in which it has been held that “the Tribunal is required to decide the question whether application merits ‘waiver’ of all or any of the requirements as specified in clauses (a) and (b) of sub-section (1) of Section 244 to enable such member(s) to file application under Section 241 and such order of ‘waiver’ being judicial in nature, cannot be passed by Tribunal, in a capricious or arbitrary manner and can be passed only by a speaking and reasoned order after notice to the (proposed) respondent(s)”. The decision taken by this Tribunal in the aforesaid case i.e. *Cyrus Investment Pvt. Ltd. (Supra)* has never been challenged before the Hon’ble Supreme Court and thus attained finality.

19. Even otherwise, it is a basic tenet of law that nobody should be condemned without hearing and in the present case when the application bearing 272 of 2016 was being contested tooth and nail by the Respondents therein and they had made a prayer to the Tribunal to frame their question

about the maintainability of the petition as a preliminary issue, the Tribunal did not frame the preliminary issue rather it ordered that it shall be heard with the main case and when the main case was heard no order was passed on this application and thus it appears that the said application has been just ignored and the Tribunal has thereafter considered the application bearing 533 of 2020 for the purpose of passing the order of waiver that too without giving any hearing to the contesting Respondents and recorded that the Petitioner has been heard at length and number of opportunity has been given to the Petitioner but nothing has been mentioned whether the Respondents have been heard or not except for mentioning that the parties have been heard. This approach of the Tribunal cannot be accepted at all because it goes against the very principle of natural justice that justice should not only be done but seems to have been done also. The deemed waiver, which has been granted, is nowhere provided in Section 244 of the Act rather the Act says that the Tribunal has to take a decision in regard to the merit of the application as to whether the waiver has to be given in respect of clause (a) and (b) of Section 244(1) and that order should not be arbitrary or capricious but should be speaking and reasoned. Since, the reasons are conspicuous by its absence in the order which has been passed in Para 8 of the impugned order, which goes to the root of the case because until and unless waiver is granted the petition shall not be considered as maintainable and no further order can be passed in it.

20. In so far as, the judgments relied upon by the Respondents are concerned, these are all on the general principles of law and are not applicable to the facts and circumstances of the present case.

21. No other point has been raised.

22. In view thereof, we are of the considered opinion that there is serious error on the part of the Tribunal in recording its finding in Para 8 of the impugned order by which waiver has been granted and the petition has been held to be maintainable which deserves to be set aside.

23. Thus, all the aforesaid appeals are allowed and the impugned order is set aside. The matter is remanded back to the Tribunal to consider and decide not only CA No. 272 of 2016 as a preliminary issue which has been filed by the Respondent No. 1 & 12 to 16 and remained undecided but also consider and decide CA No. 533 of 2020 which has been filed under Section 244 of the Act, after giving due opportunity to the Respondents (contesting Respondents) and then pass a speaking reasoned order.

24. The parties are directed to appear before the Tribunal on **16th August, 2023.**

25. The Tribunal who shall be seized of this matter after its remand, is further directed to decide the same as early as possible but preferably before 30th September, 2023.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Naresh Salecha]
Member (Technical)**

Sheetal/Ravi