



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

3. CA/63/2023 CP/268(MB)2021

IN THE MATTER OF

Yasmin Mohomedali Karmali

... Petitioner

Vs

Ahmed A Fazalbhoj Private Limited

... Respondent

U/s 59, 242(4), 241 (2) & 246 of the Companies Act, 2013

Order Delivered on 07.04.2026

CORAM:

SH. NILESH SHARMA
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant:

Aliff Fazalbhoj a/w Diya Gabija and Prachi Raval
i/b ALMT Legal (VC)

For the Respondent:

Adv. Ashish Pyasi a/w. Adv. Anshu Rathore, Adv.
Yashwin Daga i/b. Aendri Lega, R-3 (VC)

ORDER

CA/63/2023- The above CA is listed for pronouncement of order. The same is pronounced in open Court, vide a separate order.

Sd/-

CHARANJEET SINGH GULATI
Member (Technical)

//Avdhesh (PS)//

Sd/-

NILESH SHARMA
Member (Judicial)



**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – COURT - V**

C.A./ 63 (MB) / 2023

IN

C.P. / 268 (MB) / 2021

Under Section 242(2) of the Companies Act,
2013 read with Rule 11 of NCLT Rules,
2016.

Mrs. Anjum Karmali (Khandelwal)

2nd Floor, Noor Ville, West Field Estate, 63-
FF, Bhulabhai Desai Road, Mumbai –
400026.

Email: goodhousepvt@gmail.com

... Applicant

IN THE MATTER OF:

Mrs. Anjum Karmali (Khandelwal)

(Legal Heir of the Original Petitioner
substituted vide order dated 22.12.2023)

2nd Floor, Noor Ville, West Field Estate, 63-
FF, Bhulabhai Desai Road, Mumbai –
400026.

Email: goodhousepvt@gmail.com

... Petitioner

Versus

1. Ahmed A Fazelbhoy Private Limited

2nd Floor, Liberty Building, 41, Vitthaldas
Thackerey Marg, Marine Lines, Fort,
400018.

Email: sunstarconfection@gmail.com

2. Mr. Afzal Haji Mitha



Ground Floor, Noor Ville, West Field Estate,
63-FF, Bhulabhai Desai Road, Mumbai –
400026.

3. Mrs. Zeba Rajesh Kohli

Kohli House, Shantaram Narayan Lane,
Walkeshwar Desai Road, Mumbai –
400006.

Email: zebakohli@gmail.com

4. Mr. Zamin Afzal Mitha

1st Floor, Noor Ville, West Field Estate, 63-
FF, Bhulabhai Desai Road, Mumbai –
400026.

Email: zmitha@gmail.com

**5. Sunstar Confection and Trading Private
Limited**

Sunville, 9, Dr. A B Road, Worli, Mumbai
– 400018.

Email: sunstarconfection@gmail.com

... Respondents

Order Pronounced On: 07.04.2026

Coram:

Shri Nilesh Sharma, Hon'ble Member (Judicial)

Shri Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Diya Gabija a/w Adv. Prachi Raval i/b ALMT Legal
(VC)

For the Respondent: Adv. Gauraj Shah a/w Adv. Priyanka Sinha a/w Adv.
Zalak Mody-R1 & R2 (PH)
Adv. Ashish Pyasi a/w Adv. Anshu Rathore-R3 (PH)

ORDER

1. The Original Petitioner, Late Mrs. Yasmin Karmali had filed the captioned Petition under Section 59, 241, 242 and 246 of the Companies Act, 2013. The Original Petitioner died on 18.08.2022. The present Applicant, being the daughter of the Original Petitioner, has been substituted in place of the Original Petitioner vide order dated 22.12.2023 passed in CA No. 507 of 2023. The Applicant has filed the present Application under Section 242(2) of the Companies Act, 2013, read with Rule 11 of the NCLT Rules, 2016, seeking following reliefs:
- a. *Applicant be permitted to inspect the register of members as required to be maintained under section 88 of the Companies Act, 2013 (u/s 150 and 151 of Companies Act, 1956, u/s 31 of Companies Act, 1913) and allow inspection u/s 94 and 171 of the Companies Act, 2013.*
 - b. *Respondent No. 2 be directed to provide copies/inspection to the Applicant of original share certificates held by Respondent No. 2 to verify the present shareholding pattern of Respondent No. 1 Company.*
 - c. *All the parties holding shares in Respondent No. 1 Company be directed to tender all their original share certificates to this Hon'ble Tribunal for facilitating due process and settlement.*
 - d. *This Hon'ble Bench appoint a Commissioner to verify the shareholding of Respondent No. 1 Company.*
 - e. *To direct Respondent Nos. 2 and 3 to serve a monthly statement of accounts, including monthly trial balance of accounts along with details of receipts and payments of Respondent No. 1 Company from valuation date till the completion of buying/selling of shares.*
 - f. *Respondent No. 2 be directed to either (i) sell the shares that are undisputedly wholly owned and controlled by him to the Applicant or her nominees @ Rs. 81,000/- per share not later than 31 May 2023 and cede his position as the defacto Managing Director of Respondent*



No. 1 Company to the Applicant OR (ii) buy the shares of the late Original Petitioner plus any other bonus shares accrued @ Rs. 81,000/- per share not later than 31 May 2023.

- g. Restrain the Respondents from encumbering, transferring, mortgaging or alienating any immovable or movable properties of the company save the movable properties bonafide required for the day to day operations of the Company till the buying/selling of shares is completed.*
- h. Restrain the Respondents from withdrawing monies from any Bank account of Respondent No 1 Company on account of remuneration, dividend payout or payments to Respondent No 5 from the valuation date 31 March 2021. Direct the Respondents to submit an undertaking that no action will be undertaken by them which would directly and/or indirectly affect the shareholding and/or share capital of Respondent No 1 Company in any manner whatsoever, until the pendency of proceedings or till such time a settlement is agreed and completed amongst the parties.*
- i. The buyout/sellout to be settled in a timebound manner given that Respondent No 2 is above of the law of averages of life expectancy and any delay would prevent a just and equitable settlement given the facts and circumstances of the case.*

2. Brief facts as per the Application:

- 2.1 It is submitted that vide order date 09.02.2022, the Original Petitioner and the Respondent No. 2, mutually agreed for the valuation of the shareholding of the Company, and Mrs. Bhakti Shah was appointed as a valuer. Thereafter, Mr. Akshay Hinger was appointed as the valuer by order dated 05.04.2022. The valuation report was submitted before this Tribunal on 21.12.2022. As per the said report, the fair value of the shares in the Respondent Company is Rs. 90,0000/- per share (less 10% discount for lack of marketability and further less 10% discount for lack of control) and consequently the fair value per issued and paid up share is Rs. 72,320/- per share.



- 2.2 The Applicant is making an offer to purchase all the shares that are legitimately owned by the Respondent No. 2 at a price of Rs. 81,000/- per share, on the basis that she will get control of the Respondent No. 1 Company.
- 2.3 It is submitted that to complete the buyout sought by the Respondent No. 2 in IA No. 38/2021, the correct shares held by the Respondent No. 2 would need to be quantified. The current shareholding of the Company as per documents filed by the respondents with MCA and this Tribunal is as under:

| Name | Shares of Rs. 100 each | % of share holding |
|--|-----------------------------------|-------------------------------|
| Mr. Afzal Haji Mitha (R2) | 4350 | 48.33% |
| Mr. Zamin Afzal Mitha (R4) | 1890 | 21% |
| Ms. Yasmin M Karmali (Deceased Original Petitioner) | 2460 | 27.33% |
| Husseini Mission Trust (HMT) | 300 | 3.33% |
| Total Paid-up capital shares | 9000 | 100.00% |

- 2.4 It is submitted that the Original Petitioner, on inspection in 2021, found out that the paid-up capital was purportedly increased to Rs. 9,00,000.00 divided into 9,000 equity shares of Rs. 100/- and allotment of 1,000 equity shares was made to Respondent No. 2. The original Petitioner sought clarification on the arbitrary allotment of 1,000 equity shares and subsequently received a response from legal attorney of Respondent No. 1 Company on 07.06.2021, stating that no documents relating to the increase in paid-up share capital of Respondent No. 2 are available with the Respondent No. 1 company.
- 2.5 It is submitted that the bonus ratio differs among the members of the Company after receiving a letter on 16.04.2022 from the trustees of



Husseini Mission Trust (HMT) that they initially owned only 150 shares in Respondent No. 1 Company which after the bonus issue now stands at 300 shares viz a viz Original Petitioner owned 1640 shares prior to bonus allotment and currently hold 2460 shares instead of 3280 shares. The devolution of shares in Respondent No. 1 company remains unclear due to conduct of the Respondent No. 2 and 3, who are running affairs of the Company for last 4 decades.

- 2.6 It is submitted that the late Original Petitioner, Respondent No. 2 (Mr. Afzal Haji Mitha) and Respondent No. 3 (Mrs. Zeba Rajesh Kohli) became directors of the Company on 29.09.1979, 16.11.1974 and 07.03.1984 respectively. It is submitted that after death of his wife, the Respondent No. 2 self-appointed himself as the managing director and no filing in this regard has been done. Further, the number of shares held by late Mrs. Zeenat Mitha (wife of Respondent No. 2) and transmission of the said shares to the Respondent No. 2 is not known.
- 2.7 It is contended that since filing of CP 268/21, it is found that there are certain irregularities on the part of respondent no. 2 and Respondent no. 1 company.
- a. Shares held by Munir Fazelbhoy Memorial Trust (MFMT)
 - b. Shares if Husseini Mission Trust (HMT)
 - c. The ratio of shares issued by way of bonus
 - d. Change in folio number
 - e. Inspection of Member Register no provided to Minority Shareholders

In light of the above, it is submitted that all the parties should be directed to tender their original share certificates to this Tribunal and hold these certificates as a custodian until settlement is arrived and commissioner be appointed to ascertain correct shareholding that the Respondent No. 2 and the late original petitioner are entitled and also paid up number of shares of the Respondent No. 1 Company so that the buyer can pay the correct price per share and value to the seller.



- 2.8 It is submitted that vide letter dated 20.07.2021 and during proceedings of IA 38/2021, the Respondent No. 2 showed willingness to sell his shares and requested the Applicant's husband to provide an offer for the same. Accordingly, the Applicant made time-bound offer valid till 31.05.2023 to buy only such shares that are undisputedly wholly owned and controlled by the Respondent No. 2 at Rs. 81,000/- per share subject to:
- a. The Applicant being given access to registered office and books of the Respondent No. 1 Company.
 - b. The Applicant being appointed as Managing Director of Respondent No. 1 Company.
 - c. There being no encumbrances on the assets of the Respondent No. 1 Company.
 - d. All statutory dues and liabilities accruing to Respondent No. 1 Company until March 31, 2021 should be cleared in full.
- 2.9 The Applicant is also willing to sell her 2460 shares plus any other bonus shares accruing to Applicant at the price of Rs. 81,000/-
- 2.10 It is submitted that there is a constant friction between the Respondent No. 2 and Original Petitioner-cum-Applicant and the Applicant continues to have cordial relations with Respondent No. 4, residing in the USA and Respondent No. 5 Company has chosen to distance himself from ongoing proceedings. The Applicant submits that since valuation stands complete, it is now imperative for both parties i.e. Respondent No. 2 and Applicant to arrive at an arrangement to implement the consent order for valuation of shares of Respondent No. 1 Company.
- 2.11 It is submitted that in view of the consent order dated 09.02.2022, this Tribunal may direct the Respondent No. 2 to sell his shares to the Applicant at the fair valuation price determined by the said valuer. It is submitted that for purpose of this Application the shares of other Respondents can remain, and this application is restricted to the Applicant and Respondent No. 2 only.



2.12 Accordingly, the present petition has been filed by the Applicant seeking abovementioned directions.

2.13 By way of written submissions, the Applicant has stated that she is not pressing for relief in terms of prayer (f) & (i) and the present applications restricted to prayers (a) to (c) only.

3. **Written Submission on behalf of Respondent No. 1, 2 and 4**

3.1 The Respondents have not filed any reply in the present matter, however, the written submission is being considered.

3.2 It is submitted that the present Application is beyond the scope of the main Company Petition and there are no prayers in the captioned Petition in support of or in relation to the alleged allotment of 1000 shares or the shares of Munir Fazelboy Memorial Trust (“MFMT”) shares and that original Petitioner during her lifetime never had any grievance in relation to any allotment of shares and the legal heirs are escalating the same post her demise in August, 2022.

3.3 It is submitted that neither of the consent orders as alleged by the Applicant [being orders dated 9th February 2022 and 5th April 2022] direct the ascertaining of shareholding of the Company for the purpose of buyout/sell-out based on the valuation report submitted by Mr. Akshay Hinger and therefore, the very purpose of this Application is not met with. It is contended that the present CA seeks fresh and substantive directions, which go beyond giving effect to the consent valuation order which nowhere requires the ascertaining of shareholding.

3.4 It is submitted that during course of hearing on 28.01.2026, the counsel for the Applicants had made a statement that they wish to press for only prayers (b) and (c). It is contended that Applicant's locus and shareholding status remain sub-judice, in light of the order passed on 28.01.2026 by this Tribunal in CA 144 of 2022 and the Applicant must pursue appropriate proceedings under Sections 58/59 of the Companies Act, 2023 with respect to the transfer of the late org. Petitioner's shares which shall be determined at its own merits and the



questions concerning the Applicant's title to, and devolution of, the 2,460 shares and as a shareholder of R1 Company fall to be determined in the proceedings she may appropriately initiate. The present CA in so much as it seeks the rights of inspection of registers and statement of accounts, is premature and proceeds on contested assumptions.

- 3.5 It is submitted that the Applicant accepts the Petitioner's shareholding of 2,460 shares based on the valuation report, yet disputes only Respondent No. 2's shareholding while relying on the very same report. Hence, the question of determining the shareholding of the Respondents so long as the same does not arise out of any shares held by the org. Petitioner, does not arise.
- 3.6 It is submitted that directions should be made to allow the Respondents an opportunity to buy the shares of the Applicant at the price agreed between the parties.

4. **Reply filed by Respondent No. 3:**

- 4.1 The Respondent submits that the present Application is barred by limitation. Further, the Applicant does not have any locus to seek the reliefs as the Applicant is a legal representative of the late Original Petitioner.
- 4.2 It is contended that the Applicant on the one hand offers buy out / sell out of shares while on the other hand, hinders this Tribunal from signing the Order that was dictated with the consent of the Applicant and the Respondent Nos. 2 & 4 in open court during the hearing dated 03.04.2024, as more particularly set out in CA 317 of 24 filed by the Respondent Nos. 2 & 4.
- 4.3 It is denied that there is any discrepancy in shareholding of the Respondent No. 1 Company and neither the Applicant, nor the late Original Petitioner have ever challenged the shareholding of any of the shareholders of the Company until after the filing of the Company Petition.
- 4.4 It is submitted that the late Original Petitioner had been signing the Financial Statements of the Company until 2015, and making



misleading statements by submitting that they learnt about the same only in 2021 to cross the bar of limitation and estoppel. The Applicant cannot be allowed to question the entire shareholding of the Company after the late Original Petitioner having signed the Financial Statements of the Company confirming the same for decades.

- 4.5 It is submitted that, the Applicant is estopped from challenging the shareholding as the parties herein had entered into a Family Settlement/ Arrangement dated 01.12.2004 which records that the shares of the late Noorbano Fazelbhoy in the Respondent No. 1 Company shall go to Respondent No.2 and the same were reaffirmed in Articles of Agreement dated 08.10.2005. Further, it is submitted that the transmission of shares of the late Original Petitioner to the Applicant has not taken place and the said shares cannot be said to belong to the Applicant.
- 4.6 Accordingly, the Respondent prays that the Application be dismissed with costs.

5. **Findings and Analysis**

- 5.1 Heard the Ld. Counsels for the parties and perused the record. We have given our thoughtful consideration to the pleadings and submissions.
- 5.2 The present application has been filed seeking directions to inspect and verify the shareholding records and original share certificates of the company to determine the correct shareholding pattern of the Company, including appointment of a Commissioner for this purpose. The Applicant further seeks a time-bound buyout/sellout of shares at a fixed valuation, along with restrictions on the Respondents from dealing with company assets or funds. Per Contra, the Respondents have submitted that the present application is beyond the scope of valuation order passed by this Tribunal, which nowhere requires the ascertaining of shareholding. Further, it is contended that the Applicant has no locus to seek any reliefs as a legal representative.



- 5.3 With regard to the locus of the Applicant in the present Application, it is necessary to take note of the order dated 28.01.2026 passed by this Tribunal in C.A. 144 of 2022, wherein it was observed as under:

“8. The issue raised in respect of the will executed by the original Applicant herein, its probate and its legal heir do not in any way obliterate the proceedings initiated by the original Applicants herein who has in her lifetime taken appropriate steps by writing letters and executing SH-4 in favour of Ms. Anjum Khandelwal.”

- 5.4 Furthermore, the Hon’ble NCLAT in **Ambadi Investments Ltd. v. Ms. Valli Arunachalam, CA (AT) (CH) No. 53 of 2022**, has held that the Legal representative of deceased can become party to proceedings u/s 241 & 242 even if he/she is not a member of the company. The relevant extract of the said judgment is as under:

“87. ...yet this ‘Tribunal’, is of the earnest opinion, that when a ‘Member’ dies, His / Her ‘Estate’ vests in ‘Legal Representatives’, on the ‘demise of the Deceased’, and keeping in mind of a prime fact, that there is ‘no Law’, which specifically envisages that unless, the ‘Legal Representatives’, become ‘Members’ of a ‘Company’, the ‘Legal Representatives’, of the ‘Deceased’, shall not become a ‘Party’, to the ‘Proceedings’, under Section 241 and 242 of the Companies Act, 2013.”

Therefore, we are of the opinion that the Applicant as a Legal Representative has a locus to file the present Application.

- 5.5 The Applicant has instituted Company Petition No. 268 of 2021, inter alia seeking directions against the Respondents for the purchase and/or sale of shares. Both the parties had mutually agreed for valuations of the shareholdings of the Company and vide order dated 05.04.2022, Mr. Akshay Hinger was appointed as the valuer, who has submitted his valuation report on 21.12.2022. Accordingly, the Applicant seeks to buy/sell the shareholding of Respondent No. 2 at the fair valuation price determined by the said valuer.



5.6 Thereafter, the present Application has been filed by the Applicant under Section 242(2) of the Companies Act, 2013, read with Rule 11 of the NCLT Rules, 2016, seeking interim reliefs in aid of the final order. During the course of hearing, the Applicant has submitted that she is only pressing the prayers (a) to (c) and that the present application is restricted to the Applicant and Respondent No. 2 only.

5.7 The Applicant is a legal representative of the Original Petitioner. The member/shareholder of a company is entitled to inspect the Register of Member in terms of section 171 of the Companies Act, 2013, which for ready reference is reproduced hereinunder:

“Section 171: Members’ right to inspect.

171. (1) The register kept under sub-section (1) of section 170,—

(a) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and

(b) shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.

(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.”

5.8 In the present case, the original petitioner has in her lifetime executed Form SH-4 in favour of the Applicant and the Respondent has not disputed the said form. Further, the present petition is being pursued by the Applicant herein post demise of the original petitioner. Also, in view of the judgment of the Hon’ble NCLAT in the case of **Ambadi Investments Ltd. v. Ms. Valli Arunachalam (supra)**, the Legal representative of deceased can become party to proceedings u/s 241 & 242 even if he/she is not a member of the company. Under such facts



and circumstances of the case and when the inspection of the register of members is being asked in furtherance of the main petition filed under Section 241 and 242 of the Companies Act, 2013, it would only be logical to allow such inspection to the Applicant herein.

- 5.9 Accordingly, prayer (a) sought by the Applicant is hereby **allowed**. Respondent No. 2 is directed to grant the Applicant access to inspect the register of members of Respondent No. 1 Company maintained under Sections 88 and 170 of the Companies Act, 2013, and to permit such inspection in accordance with provisions of Section 171 of the Companies Act, 2013.
- 5.10 In respect of the prayer (b) & (c), it is stated that no directions in terms of the prayers therein is considered necessary once the Applicant has been allowed to inspect the register of members maintained under Section 88 and 170 of the Companies Act, 2013, which in any case would constitute evidence of shareholding. Accordingly, no further direction in this regard is warranted.
6. In view of the foregoing, Company Application 63 of 2023 is **disposed of** in terms of the above directions.

Sd/-

Charanjeet Singh Gulati

Member (Technical)

OmkarD.

Sd/-

Nilesh Sharma

Member (Judicial)