IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(C/ACT)/204/KOB/2024
IN
CP(C/ACT)/28/KOB/2023

Date of Institution: 27.08.2024

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IA(C/ACT)/153/KOB/2025

IN
CP(C/ACT)/28/KOB/2023

Date of Institution: 03.09.2025
(Under Rule 11 of the NCLT Rules, 2016)
Order delivered on: 13.07.2026

In the matter of:

M/s. VETTATHU NADU REHABILITATION CENTRE PRIVATE LIMITED

***Memo of Parties*:**

IA(C/ACT)/204/KOB/2024

1. **Mr. MOHAMMED SHAFI**
   Kappattakath, Thekkumpurath, Tirur,
   Malappuram-676102

2. **Mr. SHAMSUDHEEN,**
   Perumal Parambil, Kodakkad, Vettom,
   Tirur-676102

3. **Mr. KO HYDER ALI**
   Ottayil House, Vakkad P.O,
   Tirur-676502

4. **Mr. KTO ABDULLA**
   KTOS, Kanur, Vakkad P.O.
   Tirur-676502

5. **Mr. P.M MOHAMMED IQBAL**
   Palakkavalapil Matappalliyil House, Vettom P.O.
   Tirur-676102

6. **Mr. KTO MUHAMMED KUTTY**
   Kalathil House, Vettom Po
   Tirur-676102

………….Applicants

V/s.

1. **DR. HYDERALI KALLIYATH**
   Kalliyathu House,
   Niramaruthur Po
   Tirur-676109

2. **DR. MINI HYDERALI**
   Padiyath House Bunaya,
   Niramaruthur Po
   Tirur-676109

3. **VETTATHU NADU REHABILITATION CENTRE PVT. LTD**
   Having its registered office at Door No.7/473 ZA-5&62nd Floor, Ajiyal Complex,
   Kakkanad, Ernakulam 682030,

4. **Mr. CM MOHAMMED**
   Having its registered office at Door No. 7-473ZA-5&6, 2nd Floor, Ajiyal Complex,
   Kakkanad, Ernakulam-682030

…………..Respondents.

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IA(C/ACT)/153/KOB/2025

1. **Mr. C.M. Mohammed**
   Chundamveettil House, Vettom P.O.,
   Malappuram- 676102.

2. **VETTATHU NADU REHABILITATION CENTRE PVT. LTD**

Having its registered office at Door No.7/473
ZA-5&62nd Floor, Ajiyal Complex,
Kakkanad, Ernakulam 682030.

.... **Applicants**

V/s.

1. **DR. HYDERALI KALLIYATH**
   Kalliyathu House,
   Niramaruthur Po
   Tirur-676109

2. **DR. MINI HYDERALI**
   Padiyath House Bunaya,
   Niramaruthur Po
   Tirur-676109

3. **Mr. MOHAMMED SHAFI**
   Residing at Kappattakath, Thekkumpurath,
   Tirur, Malappuram-676102.

4. **Mr. SHAMSUDHEEN,**
   residing at Perumal Parambil, Kodakkad,
   Vettom, Tirur-676102

5. **Mr. KO HYDER ALI**
   Ottayil House, Vakkad P.O,
   Tirur-676502

6. **Mr. KTO ABDULLA**
   KTOS, Kanur, Vakkad P.O.
   Tirur-676502

7. **Mr. P.M MOHAMMED IQBAL**
   Palakkavalapil Matappalliyil House, Vettom P.O.
   Tirur-676102

8. **Mr. KTO MUHAMMED KUTTY**
   Kalathil House, Vettom Po
   Tirur-676102

..........Respondents.

Coram

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SHRI. RAVICHANDRAN RAMASAMY

Appearance in IA(C/Act)/204/KOB/2024 :

For the Applicants	: Mr. Akhil Suresh, Adv;
	: Mr. Amrith, Adv.
For the Respondents No. 1& 2	: Ms. Sreepriya Kalarikkal, PCS
For the Respondents No. 3& 4	:Mr. Sherry Samuel Oommen, Adv;
	: Ms. Sneha Maria James, Adv.

Appearance in IA(C/Act)/153/KOB/2025 :

For the Applicants	: Mr. Sherry Samuel Oommen, Adv;
	: Ms. Sneha Maria James, Adv.
For the Respondents No. 1& 2	:Ms. Sreepriya Kalarikkal, PCS
For the Respondents No. 3 to 8	: Mr. Akhil Suresh, Adv;
	: Mr. Amrith, Adv.

O R D E R

Per Coram

1. These two Interlocutory Applications have been filed under Rule 11 of the NCLT Rules, 2016, to challenge the maintainability of the Company Petition bearing No. CP(C/Act)/28/KOB/2023 filed under Sections 241 & 242 of the Companies Act, 2013.
2. In fact, the Petitioner in CP(C/Act)/28/KOB/2023 filed a Company Petition under Sections 241 & 242 of the Companies Act, 2013, alleging certain acts of oppression and mismanagement. The said Company Petition is pending, and the

Respondents have already filed their reply affidavit in the said Company Petition. The two sets of Respondents have filed their individual Interlocutory Applications as IA(C/Act)/204/KOB/2024 & IA(C/Act)/153/KOB/2025 to question the maintainability of the said Company Petition on various grounds. As both the Interlocutory Applications arise out of the same Company Petition and seek substantially similar reliefs by questioning the maintainability of the Company Petition on common factual and legal grounds, both these applications have been heard together and are being disposed of by this common order.

3. The Applicants, in the Interlocutory Applications, have questioned the maintainability of the Company Petition, contend that the Company Petition has been filed by the Petitioners, who are shareholders and directors of the Company, solely on account of grievances arising from their position as directors and not in their capacity as shareholders. According to the Applicants, the principal challenge in the Company Petition relates to the appointment of Respondent Nos. 3 and 4 as directors, and the proposed Extraordinary General Meeting scheduled on 23.12.2023 for the removal of the Petitioners from the directorship of the Company. It is their case that such grievances constitute pure directorial disputes, which do not fall within the scope of Sections 241 and 242 of the Companies Act, 2013. The Applicants further submit that the Petitioners have failed to plead or establish any continuous acts of oppression or mismanagement affecting their rights as members, nor have they disclosed any circumstances warranting winding up of the Company on just and equitable grounds. The Applicants also allege suppression of material facts by the Petitioners of the main Company Petition, particularly the failure to disclose that the first Petitioner of the main Company Petition had, by communication dated 03.11.2023, expressed his decision to step down from the positions of Consultant and Chairman while continuing as a director. According to the Applicants, the Petitioners of the Company Petition have therefore not

approached the Tribunal with clean hands and have instituted the proceedings for collateral and personal reasons. It is further contended that the appointment of additional directors was made pursuant to resolutions passed in the Board Meeting held on 16.10.2023 and that the Extraordinary General Meeting was convened after following the established practice of the Company regarding issuance of notices, with the Petitioners being fully aware of and present at the relevant meetings. The Applicants assert that the shareholders, being the ultimate owners of the Company, are legally entitled to appoint and remove directors through resolutions passed in general meetings and that no person can claim an indefeasible right to continue as a director. The Applicants also submit that the proposed EGM dated 23.12.2023 was never convened and, therefore, the principal relief sought in the Company Petition has become infructuous. Further, subsequent events, including the retirement and reappointment of directors and the disposal of connected interlocutory applications, have rendered the substantive reliefs claimed in the Company Petition unsustainable. The Applicants additionally contend that the Petition suffers from absence of material pleadings, non-joinder of necessary parties, and raises issues that fall outside the jurisdiction of this Tribunal, while the Petitioners have simultaneously pursued other proceedings on the same allegations. It is therefore their case that the disputes raised are essentially directorial and personal in nature, do not disclose any case of oppression or mismanagement under Sections 241 and 242 of the Companies Act, 2013, and consequently the Company Petition is liable to be dismissed as not maintainable in law and on facts.

4. The Respondent Nos. 1 and 2 filed their reply and contend that the Company Petition is fully maintainable under Sections 241 and 244 of the Companies Act, 2013, as the Petitioners satisfy the statutory threshold requirements and have raised substantial allegations of oppression and mismanagement affecting their

rights as members and the affairs of the Company. It is submitted that the dispute is not a mere directorial disagreement, as alleged by the applicants, but arises from a series of acts including the alleged non-issuance of notices for meetings, denial of participation in corporate affairs, illegal and fraudulent induction of directors, fabrication of statutory and corporate records, filing of documents before the Registrar of Companies on the basis of disputed resolutions, and subsequent decisions taken by a Board whose very constitution is under challenge. According to Respondent Nos. 1 and 2, these acts constitute continuing oppression and mismanagement, resulting in a material change in the management and control of the Company and causing prejudice to the interests of the Company and its members. It is further contended that the maintainability application merely seeks to characterize serious allegations of corporate misconduct as a directorial dispute and is an attempt to delay adjudication of the main Company Petition. The Respondent Nos. 1 and 2 therefore submit that the issues raised involve disputed questions of fact and law requiring adjudication on merits and that the application challenging the maintainability of the Company Petition is liable to be dismissed.

Analysis and Findings

5. We have heard both sides of the Interlocutory Applications. The Applicants of both Interlocutory Applications have supported the cases of each other and the only contesting parties are Respondent Nos. 1 and 2, that is, the petitioners of the main company petition. We have gone through the pleadings, documents on record and submissions made by all sides. These two Interlocutory Applications have been filed to question the maintainability of the company petition filed under sections 241- 242 of the Companies Act,2013, being company petition no. CP(C/Act)/28/KOB/2023. The allegations made by them about maintainability are approximately similar in legal and factual aspects. Even the defence taken by the petitioner of the main company petition and the Respondents in the

maintainability applications is the same. Having considered all submissions and case laws, we are of the opinion that there is no dispute about the shareholding of the petitioner at about 25.42%. Even if we keep the supporting shareholders away from this dispute, the shareholding of the petitioner is more than the threshold shareholding required to file an application under Sections 241-242. The Companies Act,2013, put a barrier of threshold shareholding of 10% and a number of shareholders to keep a check on unwanted litigants, but still persons having less than the threshold share can file the petition under sections 241-242, subject to the approval and exemptions as provided under the Companies Act. So, even a person having less than 10% is not debarred from filing an application for oppression and mismanagement, but they have to seek exemption from NCLT.

6. At this stage, it is relevant to refer to the decision of the Hon'ble NCLAT in ***Mr. Lokesh Kumar Bansal and Ors. v. Adhunik Food Products Pvt. Ltd. and Ors., (2025) ibclaw.in 02 NCLAT*** wherein it is held that satisfaction of any one of the alternative conditions under Section 244(1)(a) is sufficient for maintainability.

7. In the present case, since the petitioners admittedly hold 25.42% of the share capital of the Company, which is well above the statutory threshold prescribed under Section 244(1) of the Companies Act, 2013. Accordingly, the petitioners satisfy the eligibility requirements prescribed under Section 244(1) of the Companies Act, 2013 and in terms of the relevant provisions are entitled to maintain the present petition under Sections 241 and 242 of the Act.

8. We have gone through the allegations in the Company Petition, and it is claimed that there is oppression and mismanagement. Each case has its own merits, and there cannot be a straitjacketed formula to include or to exclude any act within the ambit of mismanagement and oppression. An act may be a glaring action filled with elements of oppression and mismanagement under the given circumstances, and the same act would not come within such ambit under some

other circumstances. Both these terms, oppression and mismanagement, are in fact, a bundle of facts having their factual and legal implications. In a nutshell, both are blends and mixed questions of law and facts. A cocktail of such facts is to be viewed from different angles while coming to a judicious adjudication of a dispute. If a person satisfies a condition of section 244 of the Companies Act, 2013, such a person cannot be thrown out in limine, and the petition cannot be dismissed on account of maintainability unless and until there is an element of suppression of material facts, concealment, forgery or fraud.

9. In this present case, all such factors are missing, and rather the Petitioners of main Company Petition have placed on record some material which indicates that some minutes have certain recitals, which raises a question about their genuineness or for which explanation has come that those were written subsequently in the routine course of working of the company. It will not be appropriate for this Tribunal to give any finding on the merits of such allegations at this stage. But this Tribunal is satisfied that the Applicants of the maintainability application have failed to bring their case to a pedestal where this Tribunal can be persuaded to use its inherent power under Rule 11 of NCLT Rules,2016. Once there exist a specific provision in the Companies Act to deal with maintainability of application under Section 241-242 of the Companies Act, no application under Rule 11 of the NCLT Rules,2016, is permissible unless and until there exists an extraordinary allegation of concealment of material facts, forgery, fabrication or, or pursuing a company petition would have any threat to public policy or the public at large.

10. Further, in an Appeal filed by the Applicants of this Interlocutory Application against the order of this Tribunal dated 10.01.2025, Hon'ble NCLAT made observations qua some interim order. In the light of said observations, present applications filed for the dismissal of the main Company Petition, being not maintainable, cannot be allowed, and it would be in the better interest of both

parties to have decision on the merits. It is made clear that no observation made above will have any bearing on the merits of the main Company Petition, and no observations would be construed as an expression of any opinion on the merits.

11. The Applicants have filed these applications for nothing but to misuse the process of law and are liable to be dismissed with heavy cost. Taking a lenient view, a nominal cost of Rs. 10,000/- is being imposed on individual IA to be deposited with the National Defence Fund.
12. Accordingly, these Applications bearing **IA(C/Act)/204/KOB/2024** and **IA(C/Act)/153/KOB/2025** are **dismissed** with costs and disposed of.
13. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.
14. Let the certified copy of this order be issued upon compliance with the requisite formalities.
15. File be consigned to records.

Sd /-	**Sd /-**
RAVICHANDRAN RAMASAMY	**VINAY GOEL**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Signed on this the 13th day of July, 2026.

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