IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.07
CA 190/2025, 211/2025, 169/2026 in
C.P.No.117/BB/2025

IN THE MATTER OF:

Hemant Gupta	…	Petitioner
Vs.		
Yulu Bikes Pvt Ltd & Ors	…	Respondent

Petition under Sec 241-242 of CA 2013

Order delivered on: 04.11.2026

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Petitioner	:	Adv. Shreya Rajat
For the Respondent 2 to 5	:	Adv. Ritika Ravikumar
For the Respondent 1	:	Adv. P Chinappa, Adv. Manish Singh & Adv. Thomas M

ORDER

C.A.211/2025 is dismissed vide separate order. Consequently, the **Company Petition also stands dismissed. Proceedings in other pending IAs also stand closed.** File be consigned to record room.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

(HYBRID MODE)

C.A.No.211/2025
in
C.P.No.117/BB/2025

Under Section 244 (1) of the Companies Act, 2013 r/w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

HEMANT GUPTA
Promoter and former COO of
Yulu Bikes Pvt. Ltd..
Residing at: 78/42, Latouche Road,
Kanpur- 208001 … APPLICANT

AND

1. Yulu Bikes Pvt. Ltd. & Ors
R/o. at Exora Business Park/Prestige Tech Park II,
2nd Floor, Wing A, Bellandur Khane Village,
Outer Ring R Bangalore South
Bengaluru – 560 103 … Respondent No.1

2. MR. AMIT GUPTA
R/at Villa 119, Adarsh Palm Retreat,
Outer Ring Road, Devarabeesanahalli,
Bengaluru - 560103. … Respondent No.2

3. Rajendra Kumar Mishra
R/at C-16, Chaithanya Smaran Whitefield,
Hoskote Road, Koramangala,
Bengaluru – 560067 … Respondent No.3

4. Naveen Dachuri
Exora Business Park/ Prestige Tech Park II,
2nd Floor, Wing A, Bellandur Khane Village,
Outer Ring R Bangalore South
Bengaluru – 560103 … Respondent No.4

5. Anuj Tewari
Exora Business Park/Prestige Tech Park
II, 2nd Floor, Wing A, Bellandur Khane
Village, Outer Ring R Bangalore South
Bengaluru – 560 103 .... Respondent No.5

6. Eric Arvind Cyril Vas
Shareholder of Respondent No.1
R/at Flat No.401, Marvel
Apartments, Plot No.26/2, CTS 100/26,
Poonawala Park, Salisbury Park, Pune,
Maharashtra – 411 037 .... Respondent No.6

7. Matteo Del Sorbo
Shareholder of Respondent No.1
R/at 42, Farham Eve,
Toronto NA, Canada .... Respondent No.7

Order delivered on: 04.11.2026

Coram:

1. **Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)**
2. **Hon'ble Shri Radhakrishna Sreepada, Member (Technical)**

COUNSELS PRESENT:

For the Applicant	:	Shri Dhyan Chinnappa, Sr. Counsel with Shri Tanishq Kashyap
For the R-3 to 5	:	Ms. Rithika Ravikumar
For the R-7	:	Shri Sharan Kukreja with Ms.Prashasthi Bhat, Shri Raghavendra Pai

O R D E R

Per RADHAKRISHNA SREEPADA, Member(Technical):

1. This Application is filed by Applicant on **01.12.2025** seeking waiver of the conditions specified Under Section 244(1)(a) of the Companies Act, 2013 and to maintain the Petition under Sections 241 and 242 of the Companies Act, 2013 against the Respondents.

2. **Submissions of the Applicant**:

Brief submissions regarding the case as mentioned by the Applicant are as follows:

1) The Petitioner is the Applicant, Co-founder and former Chief Operating Officer (COO) of Respondent No.1 since its inception in 2017.
2) The Respondent No.1 Company is a Private Company incorporated under the provisions of the Companies Act, 2013 on 07.08.2017. The Company is a pro forma Respondent in the Petition.
3) The Applicant filed Petition under Sections 241 and 242 of the Companies Act, 2013 on 23.08.2025 seeking various reliefs against the oppressive and prejudicial actions of Respondent Nos.2-7 and for illegal and arbitrary change in capital structure of the Company. As per the Annual Returns of the Company for the F.Y.2023-2024, the Applicant's shareholding is 17.13% of the total paid-up share capital of the Company and therefore he satisfies the threshold that is required to be met under Section 244 (1) of the Companies Act, 2013 to be eligible to file a Petition alleging oppression and mismanagement.
4) On 12.09.2025, the present Petition was listed for hearing before this Tribunal wherein the counsel representing Respondent Nos.2-5 contended that even in 2022, the Applicant had shareholding of less than 10% in the Respondent No.1 Company. Further, it was also submitted that the

Applicant did not represent 1/10th of shareholding as there are 54 shareholders in total and therefore the main petition cannot be considered by this Tribunal without the Applicant applying for and being granted waiver under Section 244 of the Companies Act, 2013. Upon hearing submissions from the Applicant and Respondent Nos.2-5, this Tribunal issued notice to the Respondents and directed that the petition be listed on 30.10.2025.

5) It is submitted that the aforesaid contentions made by Respondent Nos.2-5 are erroneous, untenable and falsified. As of the F.Y. ending 2022, the Applicant's shareholding was 10.02% of the total paid-up share capital of the Company (including equity and preference shares) and therefore the submission of Respondent Nos.2-5 is untenable. The Applicant satisfies the eligibility criteria prescribed under Section 244 of the Companies Act, 2013 and hence is entitled to maintain the present Petition for the following reasons:

6) It is submitted that for the Financial Year (F.Y.) 2018-2019, the total paid up share capital of Respondent No.1 Company (inclusive of equity and preference shares) was 55,090 shares and since the Applicant possessed 8,900 equity shares, his shareholding amounted to 16.16% of the total number of shares of the Company. It is also pertinent to note that the face value of the equity shares was Rs.10/- per share and each was fully paid up. Similarly, for Financial Year 2019-20, Respondent No.1 Company's total paid up share capital comprised of 44,500 equity shares and 37298 preference shares i.e., 81798 shares in total. The Applicant (since he continued to possess 8900 equity shares) held 10.88% shareholding of the total paid up capital of the company. Copy of the share certificate issued by

Respondent No.1 Company to the Applicant is attached as **Annexure A36.**

7) The equity shares held by Respondent No.1 Company and the Applicant herein did not change in the following year as well. It is evident from the annual returns filed by the Company for the F.Y, 2020-2021, that in addition to 44,500 equity shares, it also possessed 41,563 preference shares as part of its preference share paid-up capital. Therefore, the total paid-up capital of the Company for F.Y.2020-21 (inclusive of equity and preference shares) was 86,063 shares of which the Applicant held 8,900 equity shares. Therefore, as on 30.03.2021, the Applicant's shareholding constituted 10.34% of the total paid up share capital i.e., more than one-tenth of the total paid up share capital comprising of both equity and preference share capital. Copy of form No.MGT-7 i.e., the Annual Returns of the Company filed with the Registrar of Companies for the F.Y. 2020-2021 along with list of shareholders for the F.Y.2020-2021 is attached as **Annexure A37 Series.**

8) As regards the F.Y. 2021-2022, once again there was no change with respect to the Applicant's individual shareholding, and he continued to hold 8,900 equity shares. The total equity shares that was part of the company's paid up capital also remained unchanged, however, 2735 additional preference shares were issued and called up by the company. As a result, the total paid up-capital of the Company inclusive of equity and preference shares for F.Y.2021-2022 was 88,798 shares. Since, the Applicant held 8900 equity shares, as on 31.03.2022, his individual shareholding constituted 10.02% of the total paid up share capital of the company. Copy of form No.AOC-4, i.e., the Financial Statement of the Company for the particular F.Y.

2021-2022 filed with the ROC and the audited financial statements are attached as **Annexure A38 Series.**

9) During the 5th AGM of Respondent No.1 held on 30.09.2022, the equity shares of the company were sub-divided pursuant to Section 61(1)(d) of the Companies Act, 2013 and Article 47 of the Articles of Association of the Company. The consent of members was sought for the sub-division of each of the equity shares of the company having face value of Rs.10 each, in the authorized, issued and paid-up share capital of the company into 10 equity shares having face value of Re.1 each, effective from 29.09.2022. Though, the Applicant dissented to the approval of the aforesaid resolution, the resolution was approved by the members and the board of the company. Consequently, 10 equity shares of the face value of Re 1 each was to be allotted in lieu of the existing 1 equity share of Rs.10 each subject to the terms of the Memorandum and Articles of Association. In view of the above sub-division, the Applicant's equity shareholding increased from 8,900 equity shares to 89,000 equity shares while the total equity shares of the company increased from 45,200 to 4,45,200. Copy of the Minutes of the 5th Annual General Meeting of the Members of Yulu Bikes Private Limited held on 30.09.2022 is annexed as Annexure-A39. Copy of the revised share certificate dated 14.10.2022 issued by the company to the Application is attached as **Annexure A40.**

10) During the same financial year, in addition to the above equity shares, the Company also issued an additional 18,397 preference shares. Therefore, the total paid up capital of the company for the F.Y. 2022-2023 comprised 4,45,200 equity shares and 62,695 preference shares. According to the list of shareholders as on 31.03.2023 and the share certificate as

stated above, the Applicant held 89,000 equity shares. In respect of the total paid-up share capital inclusive of equity and preference share capital, the Applicant's shareholding was 17.52% of the total paid-up share capital of the Company. Copy of form No.MGT-7 i.e., the Annual Returns of the Company filed with the Registrar of Companies for the F.Y. 2022-2023 along with list of shareholders for the F.Y.2022-2023 is produced as **Annexure A41 Series.**

11) Also, in the F.Y. ending 2023-2024, the Company had 4,45,200 equity shares as part of its paid-up equity share capital and the number of total preference shares for the aforesaid year was 74,412, The equity shares held by the Applicant remained unchanged and therefore as of the financial year ending 2023-2024, the Applicant's shareholding was 17.12% of the total paid up share capital of the Company. Therefore, at all times, the Applicant held more than 1/10th of the issued and paid-up share capital of the company and hence satisfied the threshold for maintain a petition under Section 241 and 242 of the Companies Act, 2013. Pertinently, Respondent No.1 Company has not filed its annual returns with the Registrar of Companies for the F.Y. 2024-2025 yet. A tabular column representing the Applicant's shareholding from 2018-2024 is produced as **Annexure A42.**

12) Under Section 241 of the Companies Act, 2013, in the case of a company having share capital, the following three categories of members have the right to approach this Tribunal for the purpose of filing an application alleging oppressive, prejudicial conduct against members of the company and mismanagement of the affairs of the company.

(1) Not less than 100 members of the company or,

(2) 1/10th of the total number of members; or 38

(3) Member(s) holding not less than 1/10th of the issued share capital of the Company.

13) The three categories referred to above constitute the requisite "entry passes" for maintaining an application under Sections 241 and 242 of the Companies Act, 2013. The Applicant satisfies the third category, as it held 17.13% of the total paid-up share capital**,** comprising both equity and preference shares, as on 31.03.2024. Since "issued share capital" under Section 244 includes both equity and preference share capital, the Applicant meets the statutory threshold under Section 244(1) and is entitled to maintain the present petition.

14) It is also settled that where dilution of shareholding or an EGM is challenged as oppressive, the Applicant's shareholding prior to the alleged oppressive acts must be considered. The first impugned EGM was held on 25.08.2022, and immediately prior thereto, the Applicant held 10.02% of the total paid-up share capital as on 31.03.2022. Thus, even on this basis, the Applicant satisfies the threshold prescribed under Section 244(1) for maintaining the petition.

15) The Hon'ble National Company Appellate Tribunal and the Hon'ble Supreme Court in a multitude of cases has laid down the following factors that are required to be noticed and heeded to by the Hon'ble National Company Law Tribunal while considering an application for waiver. The factors are as follows:

(i) Whether the applicant/s 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 ought to look into the next factor.

(ii) Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'? If the Tribunal on perusal of the 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 ought to 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.?

16) It is submitted that the Applicant satisfies the first factor, and it is an undisputed fact that the Applicant is a member of Respondent No.1 Company and hence is entitled to maintain the petition. In fact, the Applicant was the co-founder of the company and has been with the company since its inception. He was also appointed as a Key Managerial Personnel (KMP) and was instrumental in the company's success and profitability.

17) The present petition concerns the intentional, pre-determined and egregiously oppressive and prejudicial conduct of Respondent Nos. 2-5 against the Applicant, principally with a view to oust him from the Company or coerce him into selling his shareholding at throwaway prices. The Applicant has also demonstrated, on a prima facie basis, that Respondent Nos. 2-7 deliberately excluded him from the day-to-day management of the Company, particularly in his capacity as Chief Operating Officer. Further, Respondent No. 2, contrary to its earlier assurances, delayed and refused to consider the Applicant’s request for partial liquidity against sale of his equity shareholding and consequently removed his name from the Promoters Group in key documents, including the SHAs and AOAs, without his participation or consent. Respondent Nos. 2-

7 have also sought to maintain the same valuation of the Company despite a drastic reduction in its actual and projected financial numbers as of September 2022, for the proposed rights issue scheduled later this year. These circumstances, taken together, prima facie establish that the present petition concerns oppression and mismanagement in the affairs of Respondent No. 1 Company.

18) Despite the fact that the Applicant satisfies the threshold stipulated in sub-clause 1 of Section 244 of the Companies Act, 2013, it is submitted that exceptional circumstances exist warranting the grant of waiver under the proviso to Section 244 of the Companies Act, 2013.

19) The Applicant faced a pattern of hostility, marginalization and exclusion by Respondent Nos. 2-5 at a time when the Company had entered into negotiations with Magna International to raise Series B funding. The Applicant routinely faced antagonism during board, co-founder and business review meetings, and his views or advice were not sought when important decisions were being made. Respondent Nos. 2-5 also conducted certain confidential meetings and discussions without the Applicant. However, since the Series B funding led by Magna International was crucial for the Company's continued growth and sustenance, the Applicant continued to discharge his duties and functions as COO in the best interests of the Company.

20) From the middle of August 2022, the oppressive and prejudicial conduct against the Applicant exacerbated. On 23.08.2022, the Company sought the Applicant's consent to convene an EGM on shorter notice of two days, i.e., on 25.08.2022, to amend the Articles of Association to reduce the consent required for convening an AGM or EGM on shorter notice to 75%. The Applicant expressly refused consent, but the Company

proceeded with the EGM and compelled the Applicant to participate under protest. During and after the meeting, the Applicant recorded his dissent and called upon Respondent Nos. 2-5 to produce the written consents of the members relied upon for convening the EGM at shorter notice. No such evidence was provided. The Applicant contends that the EGM was also convened in violation of Section 100 of the Act, which requires 21 days' notice for an EGM and permits shorter notice only upon the requisite consent and in accordance with law.

21) On 07.09.2022, the Company issued another notice convening EGM No. 2022-23/05 on 09.09.2022, again at two days' notice, to approve the issuance of Series B1 compulsorily convertible preference shares (CCPS) to Magna International and Bajaj Auto. The Applicant expressly dissented and reiterated that proceeding with the EGM despite his objection would result in procedural irregularities. The Applicant, holding over 10% of the Company's paid-up equity share capital, asserted his right to withhold consent to the shorter notice. Despite his dissent, the Company proceeded with the EGM on 09.09.2022 and passed a special resolution approving the issuance of 6,243 Series B1 CCPS aggregating over INR 79 crore. The transaction substantially modified and entrenched the capital structure arising from the Series B funding round, notwithstanding the Applicant's objections and refusal to execute the Series B documentation. The Applicant contends that such conduct was burdensome, harsh and wrongful and intended to stifle his rights as a shareholder of the Company.

22) Subsequently, an EGM on shorter notice was once again convened on 14.09.2022, to which the Applicant had categorically dissented. Despite the same, the Company proceeded to conduct the EGM and pass three significant

resolutions: (i) issuance of 12,154 Series B CCPS and 20 equity shares at a premium of Rs.1,30,745.20 per share to Magna International Inc. and Bajaj Auto Limited; (ii) appointment of Mr. Matteo Elvio Del Sorbo as a director; and (iii) adoption of the Amended and Restated Articles of Association ("Amended AOA"), which modified the existing rights and obligations under the Shareholders' Agreement dated 24.08.2022 and removed the Applicant from the definition of "Promoters" and "Promoters Group". Notably, the notice did not contain the proposed draft of the Amended AOA and merely provided a Google Drive link, which the Applicant was unable to access. The Applicant was therefore denied a meaningful opportunity to review and consider the proposed amendments prior to the EGM, rendering the conduct of the meeting prejudicial to his rights. The Applicant has accordingly sought production of all internal and external communications concerning the circulation, finalisation and approval of the Amended AOA during the relevant period.

23) It is further relevant that, within a span of three weeks, the Company convened three EGMs on 25.08.2022, 09.09.2022 and 14.09.2022, each at short notice despite the Applicant's express refusal. Despite repeated requests, the Company failed to produce the records of consents allegedly obtained for convening these meetings, merely asserting that such consents had been "obtained" and were "available". Such vague and conclusory responses are insufficient and contrary to the provisions of the Act and the Articles of Association. Further, the Applicant's dissent to the aforesaid EGMs was not recorded; instead, the minutes falsely stated that the Applicant had abstained from participating. Section 118(2) of the Companies Act, 2013, read with the Companies (Management and Administration) Rules, 2014, requires the minutes of a meeting

to contain a fair and correct summary of the proceedings. The deliberate omission of the Applicant's dissent from the minutes of the aforesaid meetings constitutes oppressive conduct.

24) During the middle of 2022, the Applicant was required to remain outside India for an extended period. Respondent Nos. 2–5 allegedly took advantage of his physical absence and the diminished role already accorded to him in the affairs of the Company by pressuring him to execute a new Shareholders' Agreement ("SHA-2"), intended to govern the Series B funding round led by Magna International. The Applicant was given only ninety minutes to execute the document, without a reasonable opportunity to review its terms or seek legal advice. Upon refusing to execute the document within such a short period, the Applicant was allegedly subjected to insults and unsubstantiated allegations by Respondent No.2. The Applicant states that, notwithstanding the hostility and pressure exerted upon him, he was ultimately compelled to sign SHA-2 in order to facilitate the Series B funding.

25) Significant and systematic changes were being made in the hierarchy of the Company by Respondent Nos. 2–7 without consulting or providing any notice to the Applicant. Prior to 2022, the Applicant, as a co-founder and ordinary equity shareholder, regularly received monthly business updates. However, these updates were abruptly discontinued, despite the Applicant's repeated requests for the same, without any basis or explanation. This further contributed to the Applicant's apprehension that he was being excluded from the Company's operations and management.

26) The Applicant was consistently represented as a Promoter and Co-Founder of the Company in investor meetings, public documents, press coverage, and on the Company's official

website. The Company was historically represented as having been founded by four individuals. However, from mid to late 2022, the Respondents began removing references to the Applicant from the Company's publications and media campaigns. In particular, the Company's official website, including the "About Us" and "Co-Founding Team" sections, came to identify only Respondent Nos. 2–5 as founders, with no reference to the Applicant. References to the Applicant were also removed from media coverage, including articles published by Inc42 that had previously mentioned and depicted him. The removal of the Applicant from the Company's promotional and public-facing materials, coupled with the promotion of Respondent No. 5 as a co-founder, was indicative of a deliberate attempt to exclude the Applicant and alter the Company's publicly represented founding history.

27) Another instance of oppression meted out against the Applicant was his unceremonious and illegal removal as Key Managerial Personnel ("KMP") of the Company. Under Section 203 of the Companies Act, 2013, a person appointed as KMP may be removed only through a resolution of the Board of Directors, and Rule 8(2) of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that the appointment and removal of KMP shall be made at a meeting of the Board. Contrary to these mandatory provisions, Respondent Nos. 2–5 terminated the Applicant's employment merely by issuing a notice of termination, which was prima facie illegal. The timing of the termination is also significant, as it followed a series of EGMs in August and September 2022, the execution of SHA-2, and amendments to the Articles, indicating that the Applicant's removal was part of a deliberate course of action to exclude him from the Company's affairs.

28) Other acts of oppression by Respondent Nos.2-7 included the following:

a) A notice dated 02.01.2024 was issued to the Applicant for convening an EGM at shorter notice, with one of the agenda items being the approval of an increase in the authorised share capital and alteration of the capital clause in the Memorandum of Association. Although the Applicant expressed his dissent and views during the discussion, the same were ignored and the proposed alteration of the share capital was approved.

b) The Applicant thereafter received a notice for an EGM to be held on 12.03.2024, with the sole agenda item being the adoption of an amended AOA pursuant to the Series B2 funding. Upon reviewing the proposed amendments, the Applicant learnt that the definitions of "Promoters" and "Promoters Group" had been revised to exclude him, notwithstanding that SHA-1 and its amendments had consistently identified him as "Promoter3" and included him within the Promoters Group alongside the other Co-Founders.

c) The proposed exclusion would deprive the Applicant of rights attached to his promoter status, including participation in Reserved Matters, exit rights, board consultation and access to information. The Applicant initially refused to consent to the amendment, as the proposed exclusion was not based on any objective criteria. However, with a view to resolving the matter amicably, the Applicant approached Respondent No. 2 and stated that he would support the amendment if his request for partial liquidity against his equity shareholding was considered and acted upon.

d) Relying on this understanding, the Applicant supported the resolution passed at the EGM on 12.03.2024. However, thereafter, Respondent Nos. 2-5 neither engaged with the Applicant regarding his request for partial liquidity nor took any steps in that regard, and instead ceased meaningful communication with him. Had the Applicant known that the understanding regarding partial liquidity would not be honoured, he would not have supported the resolution that resulted in his exclusion from the "Promoters Group", a status that had defined his role and rights in the Company since its inception.

e) On 26.09.2024, the Applicant received notice of the upcoming AGM and immediately objected to the notes to the financial statements, which omitted his name as a Promoter despite there being no formal resolution removing him from such status. The omission of the Applicant's identity as a Co-Founder and Promoter from the Company's statutory records, without any legal basis, constituted a further act of oppression and caused reputational injury.

29) The acts of oppression detailed above have caused significant prejudice to the Applicant's standing in the Company and his reputation in business circles. The Applicant's voice in the Company was consistently stifled and his role rendered nugatory by the arbitrary and unilateral acts of Respondent Nos. 2-7. The Applicant was sought to be forced out of the Company, which he had helped found, through allegations of non-participation. His removal as KMP and the failure to duly record his dissent and views in the minutes of meetings were contrary to the provisions of the Companies Act, 2013.

30) In addition, between 2022 and 2024, the Applicant repeatedly highlighted instances of mismanagement in the affairs of the Company for which Respondent Nos. 2-5 were responsible. Respondent Nos. 2-5 unilaterally undertook key senior-level hiring decisions while excluding the Applicant from the process. Further, key management meetings, including extraordinary general meetings, were convened and held at very short notice, thereby materially restricting the Applicant's ability to participate effectively in the affairs of the Company.

31) The mismanagement has further aggravated in recent months. During the Series B funding round in 2022, led by Magna International, the Company's financial and operational projections were optimistic and aggressive, premised on the launch of a new product which had the potential to reduce transportation time and costs while facilitating the delivery of essential daily goods to homes and businesses. These projections formed the basis of a valuation of approximately USD 200 million, which was presented to prospective investors for the purpose of raising funds to scale the Company's operations. The valuation was undertaken by Resurgent India using the Discounted Cash Flow method.

32) The Company's present financial and operational position is materially different, with a decline of approximately 30-60% in key parameters, including revenue growth, profitability and scale of operations. Despite this deterioration, and the Company's urgent requirement for funding, Respondent No. 1 engaged Tattvam Valuers to undertake a fresh valuation. The valuation reportedly remained almost at the same level as the 2022 valuation, despite the material deterioration in the Company's underlying performance and projections.

33) The Applicant submits that the maintenance of a substantially flat valuation despite such material changes in the Company's financial and operational circumstances raises serious concerns regarding the basis, transparency and integrity of the valuation exercise. The valuation report, in the Applicant's submission, is not supported by the Company's underlying performance and does not adequately reflect its present economic position. The circumstances surrounding the valuation therefore warrant scrutiny in the context of the allegations of mismanagement and lack of financial accountability.

34) The aforesaid acts and circumstances, taken cumulatively, demonstrate that the Respondents have created impediments at various levels with the objective of compelling the Applicant to exit the Company and liquidate his shareholding at depressed prices. The continued exclusion of the Applicant from the affairs of the Company, coupled with the acts of unilateral decision-making and the other instances of mismanagement set out above, constitute acts of oppression and mismanagement within the meaning of Section 241(1)(a) of the Companies Act, 2013, warranting the intervention of this Tribunal under Section 242 of the Act.

35) The Applicant has accordingly set out specific and continuing acts of oppression and mismanagement by Respondent Nos. 2-7 and has demonstrated exceptional circumstances warranting waiver of the eligibility requirements under Section 244 of the Companies Act, 2013. The Applicant therefore respectfully submits that the present petition deserves to be entertained upon grant of the requisite waiver.

36) During the hearing on 12.09.2025, Respondent Nos. 2-5 sought to contend that SHA-1 contains an arbitration clause and that, consequently, the present petition is not maintainable. It is

respectfully submitted that, at the stage of considering whether the eligibility requirements under Section 244 ought to be waived, this Hon'ble Tribunal is required to consider whether the allegations in the petition relate to oppression and mismanagement in the affairs of the Company and whether exceptional circumstances exist warranting waiver. The question of referring the matter to arbitration does not arise at this stage.

37) It is further submitted that, while considering an application for waiver under Section 244, the Tribunal is not required to adjudicate upon the merits of the allegations in the main company petition or determine whether a prima facie case has ultimately been established. The Applicant has specifically pleaded acts constituting oppression and mismanagement and has demonstrated circumstances warranting waiver of the statutory eligibility requirements. The objection based on the arbitration clause in SHA-1 therefore does not preclude consideration of the Applicant's request for waiver at this stage.

3. **SUBMISSIONS MADE BY RESPONDENTS**:

3.1. **Respondents No.2 to 5:**

Statement of objections are filed contending:

1) It is submitted that the Petitioner has categorically asserted that he satisfies the minimum threshold requirement of 1/10th of the share capital of Respondent No.1 Company, as prescribed under Section 244(1) of the Companies Act, 2013, and has claimed that such compliance entitles him to maintain the present Company Petition. Having unequivocally claimed compliance with the statutory eligibility requirement, the Petitioner cannot simultaneously seek waiver of the very requirement which he asserts he has already fulfilled. The

instant Application is therefore legally untenable and liable to be dismissed in limine on this ground alone.

2) The Petitioner has knowingly and wilfully misrepresented his shareholding in Respondent No.1 Company by providing false information with the apparent intention of circumventing the statutory minimum shareholding threshold prescribed for maintaining a petition alleging oppression and mismanagement. By falsely claiming to hold 19.99% of the Company's shares, the Petitioner sought to create a misleading impression before this Tribunal and obtain ex-parte or ad-interim reliefs, which, according to the Respondents, could thereafter be exploited to seek unreasonable sums from them. Such conduct is deceptive and raises serious concerns regarding the bona fides of the present proceedings. The Respondents reserve their right to file a separate application seeking appropriate legal action, including prosecution and penal consequences, in respect of the Petitioner's alleged perjury.

3) It is well established that, for the purposes of Section 244 of the Act, the expression "issued share capital" refers to the entire issued share capital of the Company, comprising both equity and preference shares, and cannot be restricted to any selective category of shares. In the present case, the Petitioner has adopted a fundamentally flawed method of computation by selectively comparing the number of shares purportedly held by him with only a limited category of shares, instead of assessing his holding against the total issued share capital of Respondent No.1 Company. Such computation is untenable and creates a misleading impression regarding the Petitioner's eligibility to maintain the present proceedings.

4) Since the commencement of the alleged acts of oppression and mismanagement, the Petitioner has held less than one-tenth of the total issued share capital of Respondent No.1 Company. Consequently, the Petitioner fails to satisfy the statutory threshold prescribed for maintaining the present Company Petition. The Petitioner's shareholding as a percentage of the total issued share capital of Respondent No.1 Company, up to the date of filing of the present Petition, is set out hereinbelow:

Sl. No.	Financial Year	Total Issued Share Capital	Share of the Petitioner in the Total issued share capital	Shareholding percentage
1	FY 2021-22	INR 28,65,460	INR 89,000	3.11%
2	FY 2022-23	INR 47,05,360	INR 89,000	1.89%
3	FY 2023-24	INR 58,77,060	INR 89,000	1.51%
4	FY 2024-25	INR 58,77,060	INR 89,000	1.51%

5) Without prejudice to the foregoing, even assuming *arguendo* that only the equity shareholding of the Petitioner is taken into consideration, the Petitioner still fails to satisfy the statutory threshold required for maintaining the present Petition. The Petitioner had entered into a Shareholders Agreement dated 25.11.2019 with the Respondents in relation to the Series A funding round led by Bajaj Auto Limited **(Ref: Annexure A8 Series, Page Nos. 320–624 of the Company Petition).** The said Agreement recorded that the Petitioner held 12.84% of the shareholding in Respondent No. 1 Company prior to the Series A closing, which was diluted to 10.70% upon completion of the said investment. The Petitioner, being a signatory to the Agreement, was therefore fully aware of the dilution of his shareholding to 10.70% in 2019.

6) Further, the draft Shareholders Agreement relied upon by the Petitioner itself (Ref: Annexure A21, Page Nos. 993–109 of the Company Petition) records that, prior to the Series B funding round in 2022 led by Magna International Inc., the Petitioner’s

shareholding had been diluted to 9.75%. The share capital structure annexed to the said draft agreement unequivocally confirms the Petitioner's 9.75% shareholding immediately prior to the closing of the Series B round. The aforesaid shareholding position was thereafter subject to further dilution upon the issuance of additional shares pursuant to subsequent funding rounds.

7) It is further pertinent to submit that the shareholding structure existing prior to the Series B funding and the issuance of further shares was formally communicated to the Petitioner through the Notice of Extra-Ordinary General Meeting bearing No. BGM/2022-23/05. The said notice contained the relevant details pertaining to the shareholding pattern of Respondent No. 1 Company and was duly circulated to the Petitioner.

8) On 16.01.2024, the Petitioner addressed an email to Respondent No. 5 requesting the shareholding table of Respondent No. 1 Company both prior to and subsequent to the closure of the Series B2 funding round. In response, the Petitioner was directed to contact the Investor Relations team of Respondent No. 1 for the requisite clarification. Pursuant thereto, the Investor Relations team responded to the Petitioner vide email dated 19.01.2024 and shared the existing shareholding table, while stating that the updated shareholding structure would be communicated upon closure of the ongoing funding rounds. As per the shareholding details shared in the said communication, the Petitioner's shareholding stood at 7.68% of the total shareholding of Respondent No. 1 Company. **(Ref: Document No. 5, Page Nos. 172–173 of the Statement of Objection R2–5).**

9) Despite the aforesaid communication, the Petitioner addressed another email dated 22.05.2024 to Respondent No. 5 stating

that he had not received the shareholding structure table for the period both pre-closing and post-closing of the Series B2 funding round. The Investor Relations personnel of Yulu thereafter responded vide email dated 21.06.2024, stating that the pre-closing shareholding structure had already been shared vide email dated 19.01.2024 and providing the post-closing shareholding structure. Following the closure of the Series B2 funding round, the Petitioner's shareholding stood at 6.97%. (Ref: Annexure No. A8, Page Nos. 320–684 and Annexure No. A35, Page Nos. 1233–1238 of the Company Petition).

10) In view of the foregoing, the record demonstrates that the Petitioner was aware of the progressive dilution of his shareholding in Respondent No. 1 Company. Nevertheless, the Petitioner has projected an inflated shareholding in the present proceedings, contrary to the documentary record. Such conduct amounts to suppression of material facts and misrepresentation before this Hon'ble Tribunal and constitutes an attempt to invoke its jurisdiction on an erroneous factual premise. The Petitioner's conduct, therefore, warrants rejection of the claims founded upon such incorrect representation and demonstrates an attempt to misuse the process of this Hon'ble Tribunal to exert pressure upon the Respondents in relation to his demands for out-of-turn liquidity.

11) It is a settled principle of law that a party invoking the jurisdiction of a Court/Tribunal must approach it with clean hands and make full and frank disclosure of all material facts and documents. A litigant who deliberately withholds material information or vital documents with a view to securing an undue advantage acts in fraud of the Court and the opposite party. Such suppression disentitles the party from seeking equitable or discretionary relief. In the present case, the Petitioner has

failed to approach this Tribunal with clean hands and is, therefore, disentitled to any relief.

12) The Petitioner has failed to demonstrate any acts of oppression or mismanagement on the part of Respondent Nos.2 to 5 or establish any exceptional circumstances warranting waiver of the statutory requirements under Section 244 of the Act. The present Petition is, in substance, merely a compilation of the Petitioner's personal grievances.

13) It is submitted that the Petitioner is seeking personal vindication of his alleged rights based on an alleged oral agreement with Respondent No. 2 for an out-of-turn liquidity event, in violation of the terms of the AoA (as amended from time to time) and the Shareholders' Agreement ("SHA"). Certain illustrative instances are set out herein below:

i) Following the organisational restructuring of the Company in March 2022, the Petitioner expressed his intention to resign from Respondent No. 1 Company and began pressuring the management to facilitate an out-of-turn exit for him at the Series B valuation, despite the liquidity and lock-in restrictions contained in the 2019 SHA and AoA. (Ref: Document No. 28, Page No. (660) of the Objections R2-5).

ii) The Petitioner expressly acknowledged that his demand for liquidity was driven by personal financial obligations, including expenses relating to his divorce proceedings. He repeatedly approached Respondent No.5 seeking liquidity of his shares and insisted that the Respondents accommodate his request, notwithstanding the applicable lock-in restrictions. He also refused to cooperate with the closing of the funding round until his demands were addressed.

iii) Vide email dated 16.07.2022, the Petitioner informed the Respondents that he had perused the draft agreement and again insisted that provisions addressing his liquidity requirements be incorporated into the Shareholders' Agreement.

iv) It was only after his liquidity demands were not accepted that the Petitioner began levelling allegations of mismanagement, despite having previously participated in meetings without raising any such objection. The Petitioner himself expressly linked his allegations of alleged "mismanagement" to the Respondents' failure to provide him liquidity. (Ref: Annexure No. (A25), Page Nos. 1121–1124 of the Company Petition).

v) In this regard, the Petitioner claimed that the "lack of sufficient response/action/support" to his "long pending request to arrange some funds" required to meet his financial obligations constituted mismanagement. This contemporaneous statement demonstrates that the Petitioner's grievance regarding the affairs of the Company was closely connected with his personal demand for liquidity.

14) Similarly, a perusal of the instant Company Petition would reveal that the Petitioner has approached this Tribunal primarily to adjudicate his personal grievances, rather than to raise any legitimate issue of oppression or mismanagement. The following illustrative instances demonstrate the same:

i. The Petitioner has alleged that his "illegal and arbitrary termination and removal as Chief Operating Officer by the Respondents" constitutes oppression and mismanagement. It is submitted that the Petitioner is, in substance, seeking adjudication of an employment-

related dispute before this Hon'ble Tribunal. The termination of the Petitioner's employment with Respondent No. 1 Company was valid and in accordance with law and the terms of his employment agreement. Further, the Petitioner has deliberately and conveniently suppressed material documents pertaining to his termination.

ii. The Petitioner has further alleged that he "was given multiple assurance that he would be appointed as a Director of the Company, however Respondents Nos. 2 to 4 failed to Act in furtherance of such assurance" and that "All Co-founders except the Petitioner were appointed as Director in the Company or its subsidiary". These averments, even if taken at their highest, disclose a personal grievance against Respondent Nos. 2 to 5 and do not, in themselves, constitute an act of oppression or mismanagement. (Ref: Para No. (17) of the Company Petition).

iii. The Petitioner has also alleged that his "participation in board meetings, townhalls, and various other internal and external meetings were restricted, and management meetings were cancelled at the last minute without any intimation". It is submitted that these allegations are, in substance, a continuation of the Petitioner's grievance regarding his non-appointment as a Director of Respondent No. 1 Company. In any event, the Petitioner, admittedly not being a Director of the Company, cannot claim a right to participate in meetings of the Board of Directors merely by virtue of his status as an employee or co-founder. (Ref: Para No. (92) of the Company Petition).

iv. The Petitioner has alleged the existence of an "oral agreement" reached in January 2022, pursuant to which Respondent No. 2 allegedly agreed to arrange for substantial funds to be transferred to the Petitioner, who was purportedly in need of the same for urgent personal reasons, against partial dilution of the Petitioner's equity holding. The said averments demonstrate that the Petitioner is, in substance, seeking enforcement or specific performance of an alleged oral arrangement, which cannot be converted into a claim of oppression and mismanagement merely by incorporating the same in the present Petition. (Ref: Para No. (37) of the Company Petition).

v. The Petitioner has further alleged that there were "Changes in Hierarchical Structure of the Company without consenting with the Petitioner and abruptly refusing to share monthly business updates with the Petitioner". These allegations pertain to managerial and operational decisions taken by Respondent No. 1 Company in the ordinary course of its business and, in the absence of any independent basis demonstrating oppression or mismanagement, cannot be characterised as such. (Ref: Para No. (60) of the Company Petition).

15) The Petitioner initially made false claims to bypass the statutory shareholding requirement and, upon being confronted with the Respondents' representations, has belatedly sought a waiver to avoid the legal consequences of his misrepresentations. The Petitioner's contention that his alleged 19.99% shareholding invalidated the meetings convened at shorter notice is mala fide, as he held less than 5% of the Respondent Company's

paid-up share capital at all material times. Further, he has produced no material to show that any other member dissented to the shorter notice.

3.2. <u>SUBMISSIONS MADE BY RESPONDENT No.6</u>:

statement of objections contending:

(i) The Waiver Application is an abuse of the process of law and a belated afterthought intended to cure incurable statutory defects in the Company Petition. The Applicant has approached this Tribunal with unclean hands, relying on fabricated metrics and a fundamentally flawed computation of its shareholding to falsely project compliance with Section 244(1)(a) of the Act.

(ii) The Applicant's pleadings suffer from inherent contradictions. In the Company Petition, the Applicant has categorically asserted that it satisfies the minimum threshold of holding one-tenth of the issued share capital prescribed under Section 244(1)(a) of the Act. In the present Application, however, the Applicant seeks a waiver of the very same statutory threshold. The Applicant has, therefore, taken mutually inconsistent positions: if it claims to hold more than 10% of the Company's issued share capital and thereby satisfies the statutory threshold, there is no basis for seeking a waiver under Section 244(1) of the Act. On this ground alone, the Application is liable to be dismissed.

(iii) It is a well-settled principle of law that a litigant cannot approbate and reprobate by taking mutually inconsistent stands in the same proceedings. The power to grant a waiver under Section 244 is a discretionary relief intended for applicants who are otherwise unable to satisfy the statutory criteria. The Applicant cannot simultaneously claim compliance with the statutory requirements while seeking an exemption from them.

Consequently, the Waiver Application is legally untenable and liable to be dismissed in limine.

(iv) Without prejudice to the foregoing, the Applicant fails to satisfy the numerical threshold prescribed under Section 244(1)(a) of the Act. As evidenced by the Applicant's own reliance on Annexure A-35 of the Company Petition, Respondent No. 1 Company comprises a total of 54 shareholders. The Applicant, as a member, therefore falls substantially short of constituting one-tenth of the total number of members.

(v) The Applicant's computation of his shareholding in Annexure A42 of the Waiver Application is also erroneous. The Applicant has purportedly claimed a 17.13% shareholding for FY 2023-24 by aggregating the numerical count of equity and preference shares (89,000/5,19,612), thereby treating shares carrying different face values as equivalent for determining his percentage of the issued share capital.

(vi) Such computation conflates the number of shares with the issued share capital of the Company. The nominal value of the equity shares is INR 1/- per share, whereas the various series of Compulsorily Convertible Preference Shares ("CCPS") carry a face value of either INR 10/- or INR 100/- per share. Accordingly, the Applicant's methodology of treating all shares on a one-share-one-unit basis, irrespective of their respective face values, is mathematically incorrect and legally untenable.

(vii) It is submitted that "issued share capital" under Section 244(1)(a) of the Act refers to the aggregate nominal value of the issued share capital, comprising both equity and preference share capital, and not merely the numerical number of shares issued. The Applicant's own documents demonstrate the same.

(viii) For instance, in Annexure A42, the Applicant has treated the total number of shares issued by the Company, i.e., 88,798, as

its issued share capital to contend that he held 10.02% of the Company's issued share capital in FY 2021-22. However, the Audited Financial Statement for FY 2021-22, produced by the Applicant himself as Annexure A38 Series (3), expressly records the issued share capital of the Company at INR 28,65,500/- at Pg. 117 of the Application. This figure necessarily accounts for the respective face values of the different classes of shares.

(ix) The same methodology is apparent from the MGT-7 Forms for FY 2020-21 and FY 2022-23, produced by the Applicant himself as Annexure A37 Series (1) (Pg. 159 onwards) and Annexure A41 Series (1) (Pg. 36 onwards), respectively.

(x) On the basis of the aggregate nominal value of the issued share capital, the Applicant's actual shareholding falls substantially below the statutory threshold. In FY 2021-22, the Applicant held shares having a nominal value of INR 89,000/- against total issued share capital of INR 28,65,500/-, amounting to approximately 3.11%. This reduced to approximately 1.89% in FY 2022-23, against total issued share capital of INR 47,05,360/-. In FY 2023-24 and FY 2024-25, the Applicant's holding stood at approximately 1.51%, with his nominal share value remaining at INR 89,000/- against total issued share capitals of INR 58,77,060/- and INR 59,00,000/-, respectively. The Applicant therefore fails to satisfy the statutory threshold prescribed under Section 244(1)(a) of the Act.

(xi) It is further submitted that the power to grant a waiver under the proviso to Section 244(1) is discretionary and equitable and cannot be invoked as a matter of course. The Applicant must establish circumstances warranting the exercise of such discretion. In this regard, the Applicant has failed to satisfy the parameters laid down in ***Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd., 2017 SCC OnLine NCLAT 261,*** wherein the

Hon'ble National Company Law Appellate Tribunal held that an applicant seeking waiver must demonstrate a compelling cause of action and establish that the alleged acts of oppression and mismanagement prejudicially affect the larger interests of the company and its members.

(xii) The Applicant has not disclosed any exceptional circumstances warranting waiver and has instead reiterated the allegations contained in the Company Petition. In particular, the Applicant's contention that the proceedings concern an alleged attempt by Respondent Nos.2-5 to oust him from the Company or coerce him into selling his shareholding does not alter the fact that, even during the relevant period, his shareholding was already substantially below the statutory threshold under Section 244(1).

(xiii) The Applicant further seeks to sustain his allegations of oppression by relying upon his alleged "illegal termination" as Chief Operating Officer ("COO") and Key Managerial Personnel ("KMP"), as well as his alleged exclusion from the Company's day-to-day management and internal reporting structures. Such grievances, however, arise from his capacity as an employee or managerial personnel and not from his capacity as a member. His employment-related claims are governed by the Employment Agreement dated 01.06.2018 and, to that extent, do not constitute acts of oppression within the meaning of Section 241.

(xiv) The allegation that the Applicant's removal as COO/KMP and the deletion of references to him from the Company's website constituted a deliberate attempt to erase his identity is denied. The Respondents' case is that his termination resulted from his alleged dereliction of duty, unauthorized physical absence and failure to contribute to the Company's business since

20.05.2022. The removal of references to a terminated employee from corporate materials is accordingly stated to be an administrative consequence of his termination and not an act of oppression.

(xv) The Applicant's allegations concerning the conduct of EGMs at short notice are also denied. The Respondents submit that the EGMs were conducted in compliance with the applicable provisions of the Act, as evidenced, inter alia, by the filing of the relevant minutes in Form MGT-14 with the ROC and the consequential amendment of the Articles of Association in the public records of the Ministry of Corporate Affairs.

(xvi) The Applicant's pleadings further reveal that the substantive dispute concerns his demand for out-of-turn liquidity. The Applicant effectively seeks enforcement of an alleged oral agreement purportedly reached in January 2022 for liquidation of his shares to meet personal financial obligations. Such a demand, particularly in the face of the lock-in restrictions contained in the Shareholders' Agreement and Articles of Association ("AOA"), is contractual and personal in nature and does not, by itself, establish prejudice to the proprietary rights of shareholders as a class or to the interests of the Company.

(xvii) The Applicant's allegation that he was subjected to a "90-minute ultimatum" over the telephone to execute the Shareholders' Agreement dated 24.08.2022 ("2022 SHA") while abroad is denied. The Respondents submit that drafts of the 2022 SHA had been circulated among the stakeholders, including the Applicant, as early as July 2022. It is further submitted that the Applicant himself declined to execute the agreement and sought to delay the investment process until his demands for liquidity were addressed. The Respondents rely, in

this regard, upon the WhatsApp communications dated 12.08.2022 annexed as Annexure A22 to the Company Petition.

(xviii) Consequently, the Applicant's non-inclusion as a signatory to the 2022 SHA is stated to have resulted from his own failure to execute the agreement within the relevant process. The Respondents accordingly deny that the execution of the 2022 SHA, or the Applicant's alleged exclusion from the Company's day-to-day management, constituted oppression or mismanagement.

(xix) The Applicant's allegations concerning the 2025 valuation of Respondent No. 1 Company are also denied. The allegation that the valuation was "grossly inflated and fabricated in collusion" with Tattvam Valuers is unsupported by any independent valuation report, empirical data or financial analysis produced by the Applicant to controvert the findings of the registered valuer. The Respondents therefore submit that the allegations of fraud and collusion are unsubstantiated.

(xx) Likewise, the allegation that Respondent Nos. 2 to 7 artificially maintained the September 2022 valuation for the proposed rights issue despite an alleged deterioration in the Company's financial position is denied. The Applicant has failed to establish any prima facie basis for these allegations or otherwise demonstrate circumstances warranting waiver under Section 244(1).

(xxi) The Applicant's contention that the existence of an arbitration agreement is irrelevant at the waiver stage is also disputed. The Respondents submit that, notwithstanding the manner in which the Applicant has characterised his grievances, the substance of several of the disputes pleaded arises from contractual rights and obligations under the 2019 and 2022 Shareholders' Agreements. Such disputes are subject to the

arbitration clauses contained therein. The discretionary power under the proviso to Section 244(1) cannot, according to the Respondents, be invoked to sustain a petition founded substantially upon personal and contractual disputes.

(xxii) It is denied that the Waiver Application was filed within time. By the Applicant's own admission, the Application was filed on 01.12.2025, after the Respondents had challenged the maintainability of the Company Petition on the ground that the Applicant did not satisfy the statutory threshold under Section 244 of the Act.

(xxiii) It is reiterated that Respondent No. 6 is not involved in the day-to-day management or operational affairs of the Company. Neither the Waiver Application nor the Company Petition attributes any specific and independent act of oppression or mismanagement to Respondent No. 6. His inclusion in the proceedings is therefore denied as unwarranted.

(xxiv) In light of the foregoing, the Applicant has failed to satisfy the statutory threshold under Section 244(1)(a) and has not established any exceptional circumstances warranting exercise of the waiver jurisdiction under the proviso thereto. The allegations pleaded are, in material respects, founded upon personal, employment-related and contractual disputes and are unsupported by sufficient material to establish a prima facie case of oppression or mismanagement. The Waiver Application is therefore liable to be dismissed in limine, with costs.

4. Rejoinder is filed by the Applicant to the objections of Respondents No.2-5, 6 & 7, reiterating the facts mentioned in the Application and the same is taken on record.

5. Ld. Counsel for the **Applicant has filed written submissions** vide Diary dated 02.09.2026, are as follows:

1) The Petitioner was a co-founder and promoter of Respondent No. 1 and, upon its incorporation, was allotted 8,900 equity shares. Pursuant to the 5th Annual General Meeting held on 30.09.2022, the equity shares of Respondent No. 1 were sub-divided under Section 61(1)(d) of the Act and Article 47 of its Articles of Association, reducing the face value of each share from Rs. 10 to Re.1, effective 29.09.2022. Consequently, the Petitioner's shareholding increased to 89,000 equity shares. The expression 'issued share capital' under Section 244(1)(a) refers to the numerical number of equity and preference shares and not their face value. Further, the Employee Stock Option Pool and Advisory Shares Pool are rightly excluded, as unvested and unallotted options do not constitute issued share capital. The Petitioner's shareholding from F.Y. 2017–18 to F.Y. 2023–24 is set out below:

FY	ISSUED CAPITAL (EQ.+PREF.)	APPLICANT'S HOLDING	%
2018-19	55,090	8,900	16.16%
2019-20	81,798	8,900	10.88%
2020-21	86,063	8,900	10.34%
2021-2022 (Excl. ESOP)	88,798	8,900	10.02%
2022-23	5,07,895	89,000	17.52%
2023-24	5,19,612	89,000	17.13%

2) There is no dispute between the parties that the Petitioner satisfies the first three factors laid down in *Cyrus Investments (P) Ltd. v. Tata Sons Ltd.* (supra). Even assuming, without admitting, that the Petitioner held only 1.51% of the total issued and paid-up share capital for the relevant F.Y., he has nevertheless demonstrated exceptional circumstances warranting waiver of the requirements under Section 244(1) of the Act. In an identical factual scenario, the Hon'ble National Company Law Appellate Tribunal in *Cyrus Investments (P) Ltd. v. Tata Sons Ltd.*, paras 153–170 (supra), held that the dual

circumstances, namely, (i) the applicant's shareholding being far below the de minimis qualification prescribed under Section 244(1)(a), and (ii) his being precluded from approaching the civil court for declaratory and injunctive reliefs against oppressive acts of the majority shareholders by virtue of Section 430 of the Act, constituted exceptional circumstances warranting waiver. This proposition was reaffirmed by the Hon'ble Supreme Court of India in *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.*, (2021) 9 SCC 449, paras 16–22.

3) Respondent Nos. 2 to 5 have sought to argue the Petition as though it were being finally heard by this Hon'ble Tribunal, contending that the Applicant has approached with unclean hands and, under the garb of seeking liquidity against his shareholding, has made unverified and untenable allegations of oppression and mismanagement. Such contentions are premature and beyond the scope of the enquiry under Section 244(1). As held by the Hon'ble National Company Law Appellate Tribunal in *Cyrus Investments (P) Ltd. v. Tata Sons Ltd.*, paras 143–145 (supra), at the waiver stage, the Tribunal is not required to adjudicate upon the merits of the proposed application under Section 241, but only to objectively assess the pleadings and material placed before it to determine whether waiver is warranted and whether the allegations pertain to oppression and mismanagement. The merits of the allegations may be examined only after the statutory requirement is waived and the member is permitted to maintain the application. Accordingly, the Respondents' contentions concerning the truth, motive, verifiability, or ultimate merits of the allegations are not matters for adjudication at this stage.
4) The Petitioner has no other effective avenue to bring before the appropriate forum the grave illegalities allegedly committed by

the majority and the promoters, which have prevented him from exercising his legal rights. The circumstances pleaded are therefore alleged to be burdensome, harsh and wrongful and, read with the factors set out above, warrant waiver under Section 244(1). The Petition ought accordingly to be permitted to proceed for adjudication on merits rather than being rejected at the threshold on the grounds raised by the Respondents.

5.1. Ld. Counsel for the **Respondent Nos.2 to 5 have filed written note** of arguments vide Diary dated 31.08.2026, are as follows:

1) It is a settled position of law that the expression "issued share capital" in Section 244(1)(a) of the Companies Act, 2013 refers to the entire issued share capital of the Company, comprising both equity and preference shares, and cannot be restricted to any selective category of shares. The issued share capital is to be computed on the basis of the nominal or face value of the shares and not merely by reference to the numerical count of shares.
2) The Petitioner initially held 8,900 shares of Rs.10/- each and subsequently held 89,000 equity shares of face value of Rs.1/- each. The total issued share capital of Respondent No.1 Company was as follows:

Financial Year	Petitioner's share capital	Total issued share capital	Petitioner's percentage of shareholding of the total share capital	Ref./Ann.
2021-22	INR 89000/-	INR 28,65,500/-	3.11%	Annexure A11 at page no.727 of the Company Petition.
2022-23	INR 89000/-	INR 47,05,360/-	1.89%	Ref. para No.11 of the statement of objections by the Respondent No.2 to 5 and page no.4, 26, 47, 79, 133 & 171 of the memo along with documents dated 03.08.2026 filed by the Respondent No.2 to 5.
2023-24	INR 89000/-	INR 58,77,060/-	1.51%	
2024-25	INR 89000/-	INR 58,77,060/-	1.51%	

3) The Petitioner's method of computation is mathematically unsound, legally untenable, and contradicted by his own documents.
   a. The Petitioner has sought to calculate his shareholding by treating 89,000 equity shares of INR 1/- each on par with thousands of CCPS having face values of INR 10/- or INR 100/- each. On this basis, he has claimed a holding of 89,000 shares out of a total of 5,19,612 shares, relying merely on the number of shares.
   b. This methodology is fundamentally flawed, as it treats shares having materially different face values as equivalent for the purpose of computing the percentage shareholding. The Petitioner's own documents demonstrate the fallacy in this approach. The Audited Financial Statements for FY 2021–22 (Ref: Annexures A37 and A41 at Pages 35 and 158 of the Waiver Application) record the total issued share capital of Respondent No. 1 Company as INR 28,65,500/-, thereby reflecting the different classes and corresponding face values of the shares. The Annual Returns (MGT-7 Forms) for FYs 2020–21 and 2022–23 (Ref: Annexures A37 and A41 at Pages 35 and 158 of the Waiver Application) likewise record the share capital by reference to the respective classes and face values of the shares.
4) The Petitioner is not entitled in law to simultaneously seek waiver of the statutory requirement he claims to have fulfilled. The Petitioner has presented a self-contradictory, illogical, and legally untenable application, liable to be dismissed.
5) The subsequent filing of the Application is an implicit admission that the statutory threshold under S. 244(1)(a) of the Act was not met. Furthermore, the events in the Petition pertain to the period between August–September 2022 and are filed beyond

limitation. No explanation is offered by the Petitioner for this gross delay.

6) The Company Petition is frivolous and a compilation of personal grievances, not of Company affairs. The Petitioner has dressed up purely personal grievances as allegations of oppression and mismanagement. The Petitioner has failed miserably to show that the alleged oppression affects him in his capacity as a member, and not in some other capacity such as director or employee. For instance:
   a. "Illegal termination" as Chief Operating Officer (COO), which is an employment dispute governed entirely by his Employment Agreement dated 01.06.2018;
   b. Not being appointed as a Director pursuant to an alleged oral agreement, which is a purely civil/contractual dispute; and
   c. "Removal from public-facing materials" and hierarchical restructuring, which are plainly managerial and operational decisions falling within the day-to-day domain of management.

   None of these acts complained of constitute oppression and/or mismanagement under S. 241 of the Act.

7) The Petitioner has repeatedly sought personal liquidity by demanding the sale of his shares at a price of his choosing, in contravention of the lock-in restrictions under the SHA 2019.
   a. Para No. 22 of the Waiver Application, wherein he sought partial liquidity against the sale of his shares;
   b. Para No. 37 of the Company Petition, wherein he refers to the oral agreement between the parties for dilution of his equity shareholding;

c. Para No. 42 of the Company Petition, wherein he states that he formally stepped aside and sought to have the transition of his role recorded;

d. Para No. 44 of the Company Petition, wherein he admits to having cooperated with restrictions on his role in the hope of obtaining liquidity;

e. Para No. 64 of the Company Petition, wherein he refers to his request for liquidity against a partial sale of his equity holding, supported by the WhatsApp conversations at Annexure A22, Page 1110 of the Company Petition; and

f. The emails at Annexures A14, Page 763, and A25, Page 1121 of the Company Petition, wherein he explicitly sought options to exit the Respondent No. 1 Company.

g. The Petitioner further demanded "funds required by me to meet my financial obligations" [Ref: Document No. A25, Pages 1121–1124 of the Company Petition] and characterised the absence of such funds as mismanagement. These assertions demonstrate that the Petitioner sought to use the proceedings under Section 241 of the Act as commercial leverage to secure an exit at an inflated price.

The Company Petition is, therefore, manifestly motivated by his personal financial demands rather than any bona fide concern regarding the affairs of the Company.

8) The Petitioner was issued pre-emptive notices providing him every opportunity to invest and maintain his shareholding. Having consciously declined or waived such opportunities, the Petitioner cannot now seek to allege that the consequent dilution of his shareholding amounts to oppression or mismanagement. Such conduct is wholly misconceived and reflects the mala fide

intent underlying the present proceedings. ***(Ref: Page No. 376-Document No. 8-Vol 2-Statement of Objections to C.A. 169 of 2026).***

9) The Petitioner has attempted to contend "exceptional circumstances" by alleging dilution of his shareholding by successive funding rounds, oppressive conduct at EGMs, exclusion from management, and threats to his reputation. None of these amounts to an exceptional circumstance in law.
   a. The dilution complained of was consensual. The Petitioner was a party to the 2019 SHA which provided for and consented to successive funding rounds.
   b. The Petitioner benefited from the increased valuation of the Company across each round.
   c. No disproportionate or targeted dilution of the Petitioner's shares is alleged. All promoters were proportionately diluted.
   d. EGMs of August and September 2022 were conducted in compliance with law, the minutes in Form MGT-14 were successfully filed with the ROC without any objection, and the resulting amendments to the Articles of Association are part of the public record of the MCA.
   e. At the EGM dated 12.03.2024, the Petitioner consented to adopt the Articles of Association and thereby ratified all prior corporate actions in relation to the Series A and Series B investments.
   f. Allegations concerning the valuation of Respondent No.1 company are vague and unsupported. The Petitioner has placed no independent valuation report, empirical data, or cogent financial analysis on record to controvert the findings of the registered valuer.

g. The Petitioner's bald allegations of fraud and collusion against independent auditors without any supporting evidence do not constitute "exceptional circumstances" for grant of waiver.

(Citations: Adesh Kumar Gupta v Liberty Shoes Para 90-94, Lieutenant Colonel Sandeep Dewan v Ootacamund Club para 16-20, 23 and 26).

10) **The distinguishing aspects of the Cyrus Investments Private Limited v. Tata Sons Ltd. & Ors ("Cyrus Mistry Judgement") case which are not present in the present case:**

5.1.1. Tata Sons Limited represented approximately one-sixth of the total value of the company and held 18.37% of the equity share capital of Tata Sons Limited. This was treated as "substantial interest" in the overall value of the company and as one of the cardinal exceptional circumstances justifying the grant of waiver. By stark contrast, the Petitioner in the present case holds a mere 1.51% of the total issued share capital of the Respondent No.1 Company. The economic disproportion between the two cases could not be more.

5.1.2. The structural impossibility of any minority shareholder meeting the S. 244 (1) (a) threshold on their own or by forming a coalition. In the present case, no such structural impossibility exists or has been pleaded by the Petitioner.

5.1.3. The corporate affairs of Tata Sons, as the controlling shareholder of the entire Tata Group, had direct implications for public interest. No such dimension of public interest or systemic significance attaches to the affairs of the Respondent No. 1 Company, which is a private start-up

company. The Petitioner has not even attempted to demonstrate any prejudice to public interest. The grievances of the Petitioner are, as shown above, entirely personal.

5.1.4. The sudden and hasty removal of the sitting Executive Chairman without prior discussion or adherence to the procedure prescribed in the Articles, the exercise of affirmative veto rights by Trust-nominee Directors, and the conversion of a public company to a private company were found to constitute a non-trivial prima facie cause of action under S. 241 not frivolous. No such circumstances exist in this case.

5.1.5. The courts were never misled as to the true quantum of the shareholding of the SP Group. By contrast, in the present case, the Petitioner's conduct herein has bene contradictory. A party who comes before a court of equity with unclean hands cannot rely on the equitable ruling of a prior case in which the Court found no such dishonesty.

5.2. Ld. Counsel for the **Respondent No.7 has filed written submissions** vide Diary dated 02.09.2026, are as follows:

1) The Petitioner instituted the captioned petition under Sections 241 and 242 of the Companies Act on August 3, 2025. In paragraph nos. 5 and 10 of the Company Petition, the Petitioner categorically stated that he held 19.99% of the equity share capital and, on that basis, claimed to satisfy the statutory threshold under Section 244(1)(a) of the Companies Act. The Company Petition was filed seeking ex parte interim orders. However, after preliminary objections to its maintainability were raised on September 12, 2025, on the ground that the Petitioner did not satisfy the statutory threshold, the Petitioner filed an application under Section 244(1) read with Rule 11 of the National Company

Law Tribunal Rules, 2016 ("Waiver Application") on December 4, 2025. The Petitioner himself states in paragraph nos. 1 and 8 of the Waiver Application that it was filed by way of "abundant caution" in view of the said objection.

2) Significantly, in the Waiver Application, the Petitioner changed his position and, in paragraph no. 11, claimed that he held 10.02% of the paid-up share capital for FY 2021-22, calculated solely by reference to the number of shares held by him vis-à-vis the total number of shares issued by the Respondent Company. This computation is itself flawed. It is well settled that the expression "issued share capital" under Section 244 encompasses the entirety of the issued share capital of a company and is not confined merely to equity share capital. In Cyrus Mistry Investments Pvt. Ltd. v. Tata Sons Ltd. (2019) 212 Comp Cas 269, the Hon'ble NCLAT expressly held that "issued share capital" includes both equity and preference share capital (paragraph nos. 78 to 80; page no. 1-49 of the memo of citations produced by Respondent Nos. 2 to 5). Similarly, in Chandra Pardhanani v. Mac Charles (India) Ltd., 2010 SCC OnLine Kar 5341, the Hon'ble High Court of Karnataka recognised that "issued capital" refers to the total amount of capital issued by a company (paragraph no. 11 at page 22 of the memo of citations produced by Respondent No. 7).
3) Accordingly, the Petitioner has incorrectly computed his shareholding by reference to the number of shares alone, while disregarding the total value of the issued share capital of the Respondent Company. On the correct computation, the Petitioner held less than 1.51% of the total issued share capital as on the date of filing the Company Petition. The Petitioner's shifting positions regarding his shareholding are material to the Waiver Application, particularly in light of the requirement that a member invoking Section 241 must approach the Tribunal bona fide and

place all relevant facts and materials before it. The Hon'ble NCLAT so observed in Brookfield Technologies Private Limited v. Shailaja Iyer, Company Appeal (AT) No. 110 of 2020, paragraph no. 48.

4) The circumstances surrounding the Company Petition also bear directly upon the exercise of discretion under Section 244. The Petitioner's own pleadings, including paragraph nos. 37, 44, 73, 74, 83 and 97 of the Company Petition, indicate that he was exploring exit options and seeking liquidity from the Respondent Company. The disputes raised by the Petitioner therefore require consideration in this context, particularly where the proceedings appear to be directed towards securing favourable exit terms rather than pursuing a genuine claim of oppression or mismanagement.

5) The chronology further demonstrates that the Company Petition was kept pending in a manner that disrupted critical corporate actions and funding initiatives of the Respondent Company. For instance, the Petitioner filed CA No. 169 of 2026 on July 23, 2026, shortly before EGM No. 2026-27-02 scheduled for August 6, 2026, seeking orders that would have the effect of impeding the corporate process and adversely impacting the Company.

6) The principles governing waiver under Section 244 are well established. In Cyrus Mistry Investments (supra), the Hon'ble NCLAT held, inter alia, that an applicant seeking waiver must demonstrate that the proposed proceedings genuinely relate to oppression and mismanagement, are not frivolous, and that exceptional circumstances exist warranting waiver (paragraph no. 146 at page 45 of the memo of citations filed by Respondent Nos. 2 to 5). The statutory threshold also serves to ensure that only members possessing a sufficient stake in a company invoke the extraordinary jurisdiction under Sections 241 and 242 and to guard against frivolous or vexatious proceedings, as recognised

in Northern Projects Ltd. v. Blue Coast Hotels and Resorts Ltd. (2009) 148 Comp Cas 279, paragraph no. 15 (pages 6-7 of the memo of citations produced by Respondent No.7).

7) The burden therefore lies upon the Petitioner to establish exceptional circumstances warranting waiver of the statutory threshold. The Petitioner has failed to discharge this burden. His inconsistent positions regarding his shareholding, the erroneous computation adopted in the Waiver Application, and the circumstances surrounding the Company Petition do not establish any exceptional circumstance warranting waiver. Permitting the Petitioner to prosecute the Company Petition despite failing to satisfy the prescribed threshold would cause serious prejudice to the Respondents, particularly Respondent No.7, which has infused more than Rs. 339 crores into the Company.

8) Accordingly, the Petitioner has neither established that he satisfies the statutory threshold under Section 244(1) of the Companies Act nor demonstrated any exceptional circumstances warranting waiver. The Waiver Application is therefore devoid of merit and deserves to be rejected.

6. We have heard the arguments of **Shri Dhyan Chinnappa, Ld. Sr. Counsel** appearing for the Applicant and **Ms. Rithika Ravikumar,** Ld. Counsel appearing for the Respondent Nos.3 to 5, **Shri Sharan Kukreja,** Ld. Counsel appearing for the Respondent No.7 and pursued the material on record including the Written submissions filed and went through the Citations relied upon by both the sides.

7. The Issues to be determined are

a. At what stage should an Application for waiver under section 244(1)(a) be filed.

b. Whether the shareholding percentage is to be computed taking in to account all kinds of Share capital.

c. Whether the computation of Shareholding percentage should be done as on the date of application at the diluted Shareholding.

d. Whether the Criteria laid down for granting the Waiver are satisfied in this case.

Each of these are discussed in detail below.

7.1. <u>At what stage should an Application for waiver under section 244(1)(a) be filed</u>:

To examine this issue, the Provisions of Section 244 are reproduced below

> **244**. (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. (Emphasis Supplied).**
> *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.

As can be seen from the Provisions of the Section, it is explicit that

a. the Waiver Application must be made

b. The same upon due consideration may be allowed or rejected.

c. Only when the Waiver application is Alllowed, then the member can be enabled to file an Application under Section 241.

7.1.2 When an Applicant has any apprehension that the conditions laid down in Section 244 may not be satisfied, then the Application seeking Waiver should be filed. In case the Criteria are satisfied, it may not be necessary to press the Waiver application.

7.1.3 In the Present case, the Applicant has filed the Company Petition on **23.08.2025** and only after the respondents have effectively argued that the criteria under Section 244 are not satisfied, then the present application for Waiver is filed on **01.12.2025**.

7.1.4 We are of the Considered view that the Applicant cannot claim to become Wiser after the arguments are conducted and try to remove the deficiencies by moving applications.

7.2. <u>Whether the shareholding percentage is to be computed taking in to account all kinds of Share capital</u>:

The Applicant has computed his shareholding taking in to account only the Equity share capital of the Company. The Respondents have argued that the Share Capital includes both the Equity Shares and Preference Shares and hence, the Computation made by the Applicant is not Correct.

Section 43 of the Companies Act, 2013 states that Share capital is of two types

43. Kinds of share capital.

The share capital of a company limited by shares shall be of two kinds, namely

(a) equity share capital

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital:

> **Section 2(55)** defines a member as
> **(55) —member** in relation to a company, means—
> (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
> (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
> (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

Combined reading of the above two sections lead to the conclusion that the Members in relation to company include both Equity share holders and Preference shareholders.

Hence while computing the Shareholding for the purposes of eligibility under section 244, the entire Share Capital including the Equity and Preference Capital needs to be considered.

7.3. **Whether the computation of Shareholding percentage should be done as on the date of application at the diluted Shareholding;**

When a member of the Company intends to move an Application under Section 241-242 of the Companies Act, 2013 it is apparently based on the contention that the shareholding pattern is altered to his /her disadvantage by singling out the member wihich amounts to Oppression.

In such a situation, the Shareholding percentage as on the date of Application under section 244 needs to be considered and if the same is below the threshold then an application for the Waiver is required to be filed. It may however be correct to mention that the Shareholding Originally held has been intentionally reduced by singling out the concerned member.

7.4. **Whether the Criteria laid down for granting the Waiver are satisfied in this case:**

The facts in the present case are examined to see whether the criteria laid down in the Cyrus Mistry's case are met for considering the Waiver.

7.4.1. Whether the applicant/s 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 ought to look into the next factor.

From the facts as available from the Documents filed, the Applicant is a Shareholder and hence a Member of the Company.

7.4.2. Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'? If the Tribunal on perusal of the 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 ought to proceed to notice the other factors.

The Prayers made in the Application are examined in the light of the facts available on record.

a. "**Illegal termination**" as Chief Operating Officer (COO):

This is an employment dispute governed entirely by his Employment Agreement dated 01.06.2018. It Cannot be treated as an act of Oppression.

b. **Not being appointed as a Director pursuant to an alleged oral agreement**:

This again cannot be classified as an act Oppression.

c. "**Removal from public-facing materials" and hierarchical restructuring**:

These are managerial and operational decisions falling within the day-to-day domain of management.

d. **Dilution of his shareholding by successive funding rounds**:

i. It is seen that the dilution complained of was consensual. The Petitioner was a party to the 2019 SHA

which provided for and consented to successive funding rounds.

ii. The Petitioner benefited from the increased valuation of the Company across each round.

iii. No disproportionate or targeted dilution of the Petitioner's shares is alleged. All promoters were proportionately diluted.

iv. It is also seen that the Petitioner was issued pre-emptive notices providing him every opportunity to invest and maintain his shareholding. It appears that such Offer was not used.

v. The Dilution of holdings has effected all the Shareholders and the Petitioner has not been singled out

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

***No Such Instances are available**.*

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

In view of the above detailed discussion we note that there do not appear to be any exceptional Circumstances warranting granting of Waiver.

8. **Decision**:

After detailed examination of the submissions made and material available on record, We are of the Opinion that no case has been made out warranting Waiver to be given. Consequently, the CA no 211 of 2025 is **Dismissed.**

-Sd-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-

SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)