IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

C.P. No. 26 (MB) 2022

Under Sections 241-242 of the Companies Act, 2013.

In the matter of

Parashram V. Kshatriya …Petitioner

Versus

Madhushree Paper Mills Pvt. Ltd. & Ors. ...Respondents

Order pronounced on 03/11/2026

Coram:

Shri. Prabhat Kumar	**Shri. Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)

Appearances:

For the Petitioner:	Adv. Shyam Kapadia, Ad. Shashwat Rai, Adv. Mrinali Dave, Adv. Aakruti Jayendran
For the Respondents:	Adv. Shubham D. Jadhav, Adv. Prashant P.

ORDER

Per: Coram

1. Present Company Petition has been filed under Sections 241 and 242 of the Companies Act, 2013, alleging a continuous course of oppressive conduct and mismanagement by Respondent Nos. 2 and 3 in the affairs of

the Respondent No. 1 Company. It is submitted that the acts complained of are not isolated incidents but form part of a continuing pattern of conduct intended to exclude the Petitioner from the management and affairs of the Company and prejudice his rights as a shareholder and Director. The Petitioner has sought the following reliefs:

a. *For appropriate orders, reliefs and directions under Section 241, 242 and 244 of the Companies Act 2013 to bring an end to the aforesaid acts of oppression and mismanagement perpetrated by the Respondents and for necessary orders and reliefs, including as prayed for herein;*

b. *Direct the Respondents to file requisite Return of Allotment in e-form PAS-3/ Form-2 with the Registrar of Companies, Mumbai and update the information regarding issue of fresh shares to the petitioner in lieu of the investment made by the Petitioner;*

c. *Direct the Respondents to update the Register of Members i.e., MGT-1 by including the correct shareholding of the Petitioner as a member of the Company and produce the same for inspection;*

d. *Initiate action against Respondent Nos. 2 and 3 under the relevant provisions of the Companies Act, 2013 for committing fraud on the Petitioner as also the Registrar of Companies by filing incorrect statements and making false declarations to prejudice the Petitioner and the Registrar;*

e. *Direct the Respondents to file all the revised annual returns and annual statements reflecting correct shareholding pattern, number of Directors and other allied details, with the ROC, Mumbai; and*

f. *Pass any other orders as this Hon'ble Tribunal deems fit in the interests of justice and equity.*

2. Brief Facts:

2.1. M/s. Madhushree Paper Mills Private Limited (hereinafter referred to as the Respondent No. 1 Company/Company) was incorporated in the year 1987 by the Petitioner, Mr. Parashram V. Kshatriya, Respondent No. 2, Mr. Balram V. Kshatriya, and their father, Late Mr. Vishwanathsa Kshatriya. The registered office of the Company is situated at 53/54, Mahatma Gandhi Road, Nashik, Maharashtra-422001. At the time of incorporation, the Company had a subscribed and paid-up share capital of Rs. 1,50,000/-, divided into 150 equity shares of Rs. 1,000/- each, held equally by the Petitioner, Respondent No. 2 and their father. Mr. Mahendra V. Kshatriya (Respondent No. 3) is brother of Petitioner and Respondent No. 2.

Name of Share holder	Equity Shares
Parashram V Kshatriya	50
Balram V Kshatriya	50
Vishwanathsa N Kshatriya	50
Total	150

2.2. After the demise of Late Mr. Vishwanathsa Kshatriya on 21.12.1997, Respondent No. 3's name appeared in the Company's records as a shareholder from the Financial Year 2000–2001. Thereafter, the shareholding reflected in the Company's records showed 160 equity shares each in the names of the Petitioner and Respondent No. 2, and 201 equity shares in the name of Respondent No. 3.

Name of Shareholder	Equity Shares
Parashram V Kshatriya	160
Balram V Kshatriya	160
Mahendra V Kshatriya	201
Total	521

2.3. Due to an apparent error, two Corporate Identification Numbers (CINs) came to be associated with the Company, namely:

(a) U99999MH1987PLC044946, under the jurisdiction of the Registrar of Companies (ROC), Pune; and

(b) U99999MH1987PTC044946, under the jurisdiction of the ROC, Mumbai.

2.4. The registered office of the Company is situated at Nashik, Maharashtra, the Company falls under the jurisdiction of the ROC, Mumbai. The Company's particulars, including the details of its Directors, paid-up share capital and annual filings up to the Financial Year 2013-2014, were reflected against CIN U99999MH1987PLC044946, which falls under the jurisdiction of the ROC, Pune. It is stated that the existence of two CINs made it difficult to identify the Company's correct records and complete its statutory filings.

2.5. Annual filing compliances of the Company for the Financial Years 2014-2015 and 2015-2016 remained pending. Consequently, the Company's name was struck off by the ROC, Pune, under Section 248(1) of the Companies Act, 2013. The Petitioner further submits that the ROC, Mumbai, issued a notice dated 29.03.2017 proposing to strike off the Company's name from the register of companies under the said provision. In response, the Petitioner addressed a letter dated 10.05.2017 to the ROC, bringing the relevant facts to its notice.

2.6. Thereafter, the ROC, Mumbai, issued another notice dated 04.09.2018 proposing to strike off the Company's name from the register of companies. In response, the Petitioner addressed a letter to the Deputy Registrar of Companies, Mumbai, informing the ROC about the earlier notice dated 29.03.2017 and the reply submitted by him on 10.05.2017.

2.7. Petitioner received a notice dated 22.10.2021 convening a Board Meeting on 29.10.2021. He subsequently received, by email dated 04.11.2021, a notice convening the 33rd Annual General Meeting of the Company, scheduled for 29.11.2021. He attended both the Board Meeting and the Annual General Meeting.

2.8. Respondent No. 2, by letter dated 05.09.2022, forwarded a notice convening a Board Meeting on 12.09.2022 to consider the allotment of shares to the shareholders of the Company, including Respondent No. 3, in the proportions proposed for the stated purpose of equalising the shareholding.

2.9. Board Meeting was held on 12.09.2022, in which a resolution concerning the allotment of 429 shares to shareholders, including 129 shares to Respondent No. 3 was passed. However, by order dated 13.09.2022, this Tribunal stayed the operation of the said resolution relating to the allotment of shares to Respondent No. 3.

2.10. Thereafter, by order dated 12.06.2026, this Tribunal directed the ROCs, Mumbai and Pune, to examine the filings made under both CINs associated with the Company and submit a report containing the following particulars:

(a) The details of the shareholding pattern and allotments made by the Company from its incorporation till date;

(b) The details of the Directors of the Company from incorporation till date, along with the forms filed in relation to their appointment, cessation or other changes in directorship; and

(c) The audited financial statements of the Company, if available, for the period from the Financial Year 1996–1997 to the Financial Year 2000–2001.

2.11. In compliance with the directions of this Tribunal, the ROC submitted its report on 15.07.2026. The report confirms that, at the time of incorporation, the Petitioner, Respondent No. 2 and Late Mr. Vishwanathsa Kshatriya each held 50 shares in the Company. It further records that no financial statements are available for the period from FY 1996-97 to FY 1999-2000. From FY 2000-01 onwards, the Petitioner and Respondent No. 2 were reflected as holding 160 shares each, whereas Respondent No. 3 was shown as holding 201 shares. The report also sets out the details of the directors reflected in the Company's statutory filings and the relevant forms filed with the ROC. However, the ROC report does not disclose any supporting record or explanation regarding the allotment or transfer of the 201 shares standing in the name of Respondent No. 3.

3. Submission of Petitioner

3.1. Ld. Counsel for the Petitioner submits that the Company was incorporated by the Petitioner, Respondent No. 2, and their late father, and that the Petitioner has been associated with the Company as a shareholder and Director since its incorporation. The Petitioner alleges that, after the demise of their father, the Respondents illegally altered the Company's shareholding structure by transferring/transmitting the shares held by the late Vishwanathsa Kshatriya in favour of Respondent No. 3, without any valid authority, resolution, family arrangement, or supporting documentary evidence. It is further submitted that, as per the Company's records for the Financial Year 2000-2001, Respondent No. 3 was shown as holding 201 equity shares, whereas the Petitioner and Respondent No. 2 were each shown as holding 160 equity shares.

3.2. Ld. Counsel for the Petitioner further submits that Respondent No. 2 has retained control over the books of account, statutory registers, register of members, minutes book, register of directors, annual returns and other

important records of the Company. Despite repeated requests, the Petitioner has allegedly been denied inspection of these records. It is further submitted that the financial statements and statutory returns of the Company have been prepared and filed on the basis of information furnished by the Respondents, without affording the Petitioner an opportunity to inspect or verify the underlying records.

3.3. It is submitted that, during the period from the Financial Year 2006-2007 to the Financial Year 2013-2014, statutory forms and returns were filed through a consultant engaged by the Respondents. It is alleged that the Petitioner's Digital Signature Certificate was used to file certain documents without his knowledge or consent. The Petitioner further submits that disputes arose between the parties around the year 2012, including disputes relating to properties and another company, namely Bhikusa Papers Private Limited.

3.4. It is further submitted that the disputes between the parties, coupled with the Respondents' alleged conduct in relation to the Company's records, shareholding and management, adversely affected the Petitioner's ability to participate in the affairs of the Company and safeguard his rights as a shareholder and Director.

3.5. Ld. Counsel for the Petitioner submits that the Respondents excluded him from the Company's decision-making process by failing to serve notices of Board Meetings and Annual General Meetings upon him. It is submitted that the annual returns filed for the Financial Years 2014-2015 to 2019-2020 recorded only Respondent Nos. 2 and 3 as present at the Annual General Meetings. The Petitioner alleges that no notices of the relevant meetings were served upon him, thereby depriving him of the opportunity to attend the meetings, participate in the Company's affairs, and exercise his rights as a shareholder and Director. The Petitioner first received notice

dated 22.10.2021 of the Board Meeting dated 29.10.2021, and notice dated 04.11.2021 for the 33rd AGM to be held on 29.11.2021.

3.6. Ld. Counsel for the Petitioner further submits that, at the request of Respondent No. 2, the Petitioner contributed Rs. 1,70,000/- towards the subscription of 170 additional equity shares of the Company, each with a face value of Rs. 1,000/-, in or around the year 2007. However, the Respondents allegedly failed to properly record or recognise the Petitioner's investment and subsequently recorded the amount inconsistently in the Company's records.

3.7. It is submitted that the Respondents failed to ensure the timely filing of the Company's annual returns, financial statements and other statutory documents with the ROC. It is further submitted that these defaults led to the issuance of notices dated 29.03.2017 and 04.09.2018, proposing to strike off the Company's name from the register of companies. The Petitioner contends that, despite the Respondents being in control of the Company's records and affairs, he was compelled to approach the ROC and respond to the notices to protect the Company's interests.

3.8. Ld. Counsel for the Petitioner further submits that the Company continued to be reflected under two Corporate Identification Numbers (CINs) on the MCA portal, thereby creating difficulties in completing the requisite statutory filings. To resolve the issue, the Petitioner approached the concerned ROC offices and raised service requests on the MCA portal in July 2018.

3.9. Ld. Counsel for the Petitioner submits that, despite the introduction of the Companies Fresh Start Scheme, 2020, the Respondents failed to take the necessary steps to complete the pending statutory compliances of the Company. It is submitted that the Petitioner, by letter dated 14.07.2020,

requested Respondent No. 2 to file the pending forms and, by a further letter dated 13.08.2020, sought inspection of the Company's statutory records. However, the Respondents denied having custody of the said records. The Petitioner contends that, on the one hand, the Respondents failed to facilitate statutory compliance and, on the other, denied access to the records necessary to verify the Company's affairs.

3.10. Ld. Counsel for the Petitioner further submits that his name was not reflected as a Director on the MCA portal, despite his continued association with the Company. It is submitted that the Petitioner furnished the requisite details and requested the Respondents to file the necessary forms to update the records relating to his directorship. However, the Respondents allegedly failed to complete the requisite filings within the prescribed time. The Petitioner contends that this omission adversely affected his position and further restricted his ability to participate in the management of the Company.

3.11. Ld. Counsel for the Petitioner further submits that, as on 16.10.2018, the details of the Company displayed on the MCA portal reflected the following particulars:

ROC, Mumbai	ROC, Pune
Name – Madhushree Paper Mills Private Limited Last AGM held – 26/08/2006 Date of Balance Sheet- 31/03/2006 **Directors/ Signatory details** – not updated **Status of Company** – Active	**Name** – Madhushree Paper Mills Private Limited Last AGM held- 23/09/2014 **Date of Balance Sheet**- 31/03/2014 **Directors/ Signatory details** – Mr. Parashram V. Kshatriya (the Petitioner), Mr. Balram V. Kshatriya (Respondent No. 2), Mr. Mahendra V. Kshatriya (Respondent No. 3) **Status of Company** – Strike off

4. **Submissions of the Respondents:**

4.1. Ld. Counsel for the Respondents submits that the Petitioner is the elder brother of Respondent Nos. 2 and 3 and was responsible for filing the Company's statutory returns with the Registrar of Companies (ROC) up to the Financial Year 2013–2014. It is further submitted that, since the incorporation of the Company, the books of account, cheque books, minutes book, register of directors, register of shareholders and other records of the Company have remained in the custody of the Petitioner. The Petitioner also served as the Company's Chairman for a considerable period.

4.2. Ld. Counsel for the Respondents further submits that the Petitioner subsequently neglected his responsibility to ensure timely filing of the Company's statutory returns with the ROC. As the Petitioner failed to complete the requisite filings, Respondent Nos. 2 and 3 were left with no alternative but to file the pending returns from 2020 onwards.

4.3. It is submitted that since Petitioner and Respondent Nos. 2 and 3 were the only shareholders of the Company, notices of Board Meetings and Annual General Meetings were not issued in writing, as the meetings were held by mutual understanding among the parties. It is further submitted that the Petitioner himself made no attempt to convene the Company's meetings after the year 2014 and deliberately refused to sign the annual reports and related documents, resulting in the Company's name being struck off the register of companies.

4.4. Ld. Counsel for the Respondents submits that the annual returns reflecting the Company's shareholding pattern were filed by the Petitioner himself. It is contended that the Petitioner has now alleged that 330 shares were allotted to him while denying knowledge of the allotment of 201 shares to Respondent No. 3. The Respondents submit that this stand is contrary to the annual returns for the Financial Year 2013-2014, which were signed and filed by the Petitioner and reflected the shareholding pattern of the Company.

4.5. Ld. Counsel for the Respondents further submits that the Company has not engaged in any manufacturing or trading activities since its incorporation and has not generated any income from its business operations. It is therefore contended that there was no scope for manipulation of the Company's accounts, as alleged by the Petitioner. The Company's expenditure was limited to payments made to Chartered Accountants and Company Secretaries for the preparation and audit of its annual financial statements, the filing of statutory returns, and the payment of ROC fees. It is further submitted that the expenses incurred for these professional services and statutory fees were borne by contributions from the Directors.

4.6. Ld. Counsel for the Respondents submits that the Petitioner himself refused to sign the annual reports and related documents of the Company

for the Financial Years 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2018-2019, for reasons best known to him. The Respondents contend that the delay in completing the Company's statutory filings was attributable to the Petitioner's failure to cooperate.

4.7. Ld. Counsel for the Respondents submits that the Petitioner has approached this Tribunal by portraying himself as a diligent Director, allegedly to avoid disqualification and other penal consequences arising from the Company's statutory defaults. It is further contended that the Petitioner filed the Company's income tax returns for the period from 2014 to 2018 only after the prescribed due dates. The details of the delayed filings are stated to be as follows:

Sr. No.	Financial Year	ITR Filing Date	Filed by
1	2014-2015	26.03.2018	Petitioner
2	2015-2016	24.03.2018	Petitioner
3	2016-2017	24.03.2018	Petitioner
4	2017-2018	27.10.2018	Petitioner

4.8. It is submitted that Respondent Nos. 2 and 3 have neither removed the Petitioner from the office of Director nor initiated any proceedings for his removal. It is contended that the Company's balance sheets continue to reflect the Petitioner's association with the Company. The Respondents further submit that the failure to update the Petitioner's directorship details on the MCA portal was due to the Petitioner's negligence and miscommunication. The Petitioner continues to be a Director and

shareholder of the Company.

4.9. Ld. Counsel for the Respondents further submits that Respondent Nos. 2 and 3 have taken steps to discharge their statutory responsibilities as Directors of the Company. In this regard, they filed e-Form DIR-3C on 15.02.2021, bearing SRN T00810937, and resubmitted the form on 05.05.2021 after addressing the queries raised by the ROC. It is contended that these steps were taken even before the present Petition was filed.

4.10. Ld. Counsel for the Respondents submits that, at the Board Meeting held on 12.09.2022, the shareholding pattern of the Company was considered and decided as follows:

Sr. No.	Name	No. of Shares already held
1	PVK	160
2	BVK	160
3	MVK	201

4.11. It is further submitted that, at the said meeting, it was proposed to allot an additional 170 equity shares each to the Petitioner and Respondent No. 2 and 129 equity shares to Respondent No. 3. The proposed allotment would result in the following shareholding pattern:

Sr. No.	Name	No. of Shares currently held	No. of Shares for Future Allotment	Total No. of Shares
1	PVK	160	170	330
2	BVK	160	170	330
3	MVK	201	129	330

4.12. Ld. Counsel for the Respondents submits that the Petitioner, Respondent No. 2 and their late father were the original equal shareholders and first Directors of the Company. After their father's demise in 1997, the shares he held were transferred with the consent of all the sons. It is contended that these transactions occurred while the Petitioner was in charge of the Company's records and documents. The Respondents further submit that, upon receiving the notice dated 27.01.2024 issued by the Petitioner's Advocates, they searched the Company's records to locate the relevant documents relating to the transfer/transmission of shares. However, the documents could not be traced, and the Respondents contend that the original documents remain in the Petitioner's custody.

5. **Findings & Analysis:**

5.1. Heard Ld. Counsel and perused the material available on record.

5.2. The first issue for consideration is the allegation of the Petitioner that the shareholding pattern of the Respondent No. 1 Company was altered without any lawful basis after the demise of their father, Late Mr. Vishwanathsa Kshatriya, on 21.12.1997. The Petitioner contends that the Company's records for the Financial Year 2000–2001 reflected the

authorised share capital of Rs. 10,00,000/- divided into 1,000 equity shares of Rs. 1,000/- each and the subscribed and paid-up share capital of Rs. 5,21,000/- divided into 521 equity shares of Rs. 1,000/- each. The said records reflected 160 equity shares each in the names of the Petitioner and Respondent No. 2 and 201 equity shares in the name of Respondent No. 3.

5.3. It is the case of the Petitioner that there is no supporting record of allotment or transfer of shares in favour of Respondent No. 3, including any corresponding return of allotment or other statutory filing. The Petitioner further alleges that the shares held by their late father were dealt with contrary to his Will, which, according to the Petitioner, contemplated an equal division of the shareholding among the Petitioner and Respondent Nos. 2 and 3. The Petitioner has also alleged that his Digital Signature Certificate was used without his knowledge or consent for filing Online Form 32 for appointment of Respondent No. 3 as a Director of the Respondent Company.

5.4. Per contra, Ld. Counsel for the Respondents submits that the Petitioner, being the elder brother, was in charge of the Company's records and was responsible for filing its statutory returns with the Registrar of Companies up to the Financial Year 2013–2014. It is contended that the Petitioner himself signed and filed the annual returns reflecting the shareholding pattern. The Respondents further submit that following their father's demise, the shares he held were transferred or transmitted with the consent of all the brothers.

5.5. It is pertinent to note that the Petition is filed in the Year 2022 alleging the acts of Allotment of Shares in the Year 2000-2001, after lapse of 22 years. The Petitioner's grievance is that the transmission of shares in the name of Respondent No. 3 was made contrary to the Will of the Petitioner's

Father. Further, the filings with the Registrar of Companies were done by the Petitioner, and admittedly the Filings bear the Digital Signature of the Petitioner.

5.6. It would be useful to refer to Section 86(2) of the Bharatiya Sakshya Adhiniyam, 2023, which provides that, unless the contrary is proved, a presumption shall arise that a Secure Electronic Signature affixed by a Subscriber with the intention of signing or approving an Electronic Record was so affixed by the Subscriber.

5.7. The Petitioner has only contended that without his knowledge the Digital Signature was affixed; however, in what manner his Digital Signature and in what form it was affixed is not pleaded. Neither is it pleaded as to who has affixed his Digital Signature without his consent and knowledge. Therefore, unless the contrary is proved by the Petitioner, the presumption that the Subscriber signed the documents digitally cannot be rebutted. Therefore, making a grievance of transmission of Shares in favour of the Respondent No. 3 after lapse of 22 Years lacks bona fides.

5.8. It is further pertinent to note that the Petitioner has challenged the increase in the shareholding of Respondent No. 3 from the earlier shareholding reflected in the Company's records. However, the Petitioner has also not placed sufficient documentary evidence on record to establish the basis on which his own shareholding, as well as that of Respondent No. 2, increased from 50 shares each to 160 shares each. Thus, while the absence of supporting records regarding the disputed shareholding warrants consideration, the available material does not establish that the alleged irregularity was attributable exclusively to the Respondents or that it was part of a deliberate scheme to oppress the Petitioner.

5.9. Hon’ble Supreme Court in ***Chairman, State Bank of India v M J James***,

(2022) 2 SCC 301, held the following: *"36. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is nonexistent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay."* Further, in ***Abdul Wahid Abdul Gaffor Khatri Director and Other vs Safe Heights Developers Pvt. Ltd. and Others,*** *(2018) SCC OnLine Bom 693*, Hon'ble Supreme Court held as under: *"This Court, in the context of a similarly discretionary order under Section 111 of the Companies Act, 1956, in* ***Sulochana Neelkanth Kalyani v. Takle Investments Co. & Ors****., has held that exercise of such discretion could certainly be affected by inordinate and unexplained delay and laches and that any such delay may render granting of the relief inequitable, as there could be equities arising in favour of other parties as a result of such delay and also such delay may give rise to a case of acquiescence, waiver or estoppel. These aspects would be for the CLB to assess and would depend upon the facts and circumstances of each case".* In view of the above, we are of the considered view that the Petitioner has failed to explain the inordinate delay of 22 years in challenging the alleged allotment or transfer of shares. The Petition, insofar as it seeks relief in respect of the aforesaid grievances, must be considered in light of delay and laches as was settled law in matters under the Companies Act, 1956, which had no express provision for limitation. In the absence of cogent evidence establishing the alleged acts of oppression and mismanagement, such delay weighs against granting relief in respect thereof. Nonetheless, the Companies Act, 2013 specifically makes the Limitation Act applicable to applications/petitions filed under the Act, and the Limitation Period thereunder is 3 years. On

both grounds, the Petitioner has failed to bring on record reasons for not approaching this tribunal within the permissible time, even though the Petitioner, being a director of the Respondent Company, ought to be aware of the requirement of filing and could have diligently discovered the transmission of shares which is alleged to be contrary to the will.

5.10. The Petitioner has further alleged that, in or around the year 2007, he advanced urgent funds in the form of an unsecured loan to the Company at the request of Respondent No. 2, on the assurance that fresh equity shares would be issued to him in consideration of his contribution. According to the Petitioner, 170 equity shares were allotted to him, and the corresponding share certificates were handed over to him. However, the allotment was not properly recorded in the Company's books of account and statutory records, and the prescribed procedure under the Companies Act was not followed.

5.11. The Petitioner has also referred to the letter dated 05.09.2022 issued by Respondent No. 2, enclosing a notice for convening a Board Meeting on 12.09.2022, wherein it was proposed to allot 170 equity shares each to the Petitioner and Respondent No. 2 and 129 equity shares to Respondent No. 3, with the stated objective of equalising the shareholding. The Petitioner objected to the proposed allotment on the ground that the procedure prescribed under the Companies Act, 2013, had not been followed. He also objected to the proposed allotment in favour of Respondent No. 3, whose existing shareholding was itself under dispute. The Respondents, on the other hand, contend that the shareholding pattern was within the Petitioner's knowledge and that he himself was responsible for maintaining the Company's records and filing its statutory returns for several years.

5.12. 5.12. The alleged allotment of 170 equity shares to the Petitioner dates

back to 2007. The Petitioner has not satisfactorily explained why the alleged failure to record the allotment in the Company's books and statutory records was not earlier challenged, particularly given that he remained associated with the Company and, as the Respondents contend, served as its Chairman for a considerable period. The Respondents have further contended that the proposed allotment was intended to equalise the parties' shareholding and that no prejudice was caused to the Petitioner.

5.13. It is, however, noted that the proposed allotment of shares, as reflected in the notice dated 05.09.2022, was required to comply with the provisions of the Companies Act, 2013. The mere objective of equalising the shareholding cannot dispense with compliance with the prescribed statutory procedure. Nevertheless, the failure to follow the requisite procedure, by itself, does not establish that the Respondents acted with the intention of oppressing the Petitioner. It is further noted that, in the year 2007, Respondent No. 2 handed over to the Petitioner the original share certificates representing 160 equity shares, along with the freshly issued share certificates representing 170 additional equity shares of Rs. 1,000/- each. The said share certificates were issued and handed over when the Petitioner was actively involved in the affairs of the Company and continued to participate in its management, including by signing the financial statements, until FY 2014. Having accepted the share certificates and remained associated with the affairs of the Company for several years thereafter, the Petitioner is precluded, in the facts and circumstances of the present case, from challenging the said allotment at this belated stage on the principles of delay, laches, and acquiescence.

5.14. In the present case, the handing over and acceptance of the share certificates, coupled with the Petitioner's continued participation in the affairs of the Company for several years thereafter, are relevant

circumstances demonstrating the parties' acceptance of the shareholding arrangement. Accordingly, he cannot have any grievance in relation thereto. Accordingly, the books and records of the Company shall, therefore, be updated to reflect the aforesaid shareholding pattern.

5.15. Further, considering that the proposed allotment contemplated the issuance of shares to the Petitioner as well as Respondent Nos. 2 and 3, and having regard to its stated objective of equalising the shareholding, the Petitioner has not demonstrated how the allotment, in itself, prejudiced his rights. In the absence of sufficient documentary evidence establishing the terms of the alleged 2007 transaction, the validity of the claimed allotment of 170 shares, and the manner in which the Petitioner's rights were prejudiced, this allegation cannot, by itself, be treated as oppression or mismanagement by the Respondents.

5.16. There might be lapses in reflecting the Allotments in the Account Books or in making filings. Admittedly, no proof of filings has been placed on record. It is pertinent to note that the present issue pertains to Sections 58 and 59 of the Companies Act, 2013, which can be rectified further, since the Petitioner himself was in charge of the Company and was responsible for making filings with the Registrar of Companies; now the Petitioner cannot contend that he was subject to oppression by the Respondents. Moreover, shortcomings can be rectified by making an appropriate application with the Registrar of Companies. Further, the Petitioner cannot have any grievance if the interest of Respondent No. 3 was prejudiced by allotment of Shares in order to equalise the inter-se shareholding, in the absence of Respondent No. 3 being aggrieved by such allotment.

5.17. The next allegation concerns the non-service of notices of Board Meetings and Annual General Meetings upon the Petitioner. The Petitioner submits that the annual returns for the Financial Years 2014–2015 to 2019–2020

reflected only Respondent Nos. 2 and 3 as present at the Annual General Meetings. He further submits that he received notice of a Board Meeting scheduled for 29.10.2021 by email dated 22.10.2021, and notice of the 33rd Annual General Meeting scheduled for 29.11.2021 by email dated 04.11.2021, and that these were the first notices he received regarding the meetings. The Respondents, however, contend that the parties are brothers and that meetings were conducted on the basis of their mutual understanding. They further submit that the Petitioner had been associated with the Company's affairs and that disputes regarding the meetings arose only subsequently.

5.18. We note that the material placed on record indicates that the Petitioner continued to remain in contact with the Respondents after 2014. The Petitioner has also filed the Company's income-tax returns for certain years between 2014 and 2018 and has continued to be associated with the affairs of Bhikusa Papers Private Limited, in which the parties were also shareholders. In these circumstances, the Petitioner has not sufficiently explained whether he made any inquiry or raised any objection to the Respondents regarding the conduct of the Company's meetings or his alleged exclusion from them before filing the present Company Petition. On the material available, the allegation of deliberate exclusion from the Company's meetings has not been sufficiently established as part of a continuous course of oppressive conduct by the Respondents.

5.19. In the facts and circumstances of the present case, it is also necessary to consider the nature of the relationship between the Petitioner and Respondent Nos. 2 and 3. The Petitioner and Respondent Nos. 2 and 3 are brothers and were associated with the Company as shareholders and members of the same family. It clearly follows from the above discussion that there is a breakdown of trust and confidence between the Petitioner

and Respondent Nos. 2 and 3. Accordingly, it is just and equitable to wind up the affairs of the Respondent Company. However, it is also noted that the Respondent Company is a non-functional company but owns agricultural land admeasuring approximately 21 hectares and 46 gunthas in Nashik, and that passing a winding-up order would be prejudicial to the interests of its stakeholders. Considering the family relationship between the parties and the nature of the Company's assets, it would be appropriate for them to explore an amicable resolution concerning the future of the Company, including the sale or distribution of its assets in accordance with law, its continued existence, or its voluntary liquidation, as may be mutually agreed and legally permissible.

5.20. Hon'ble Supreme Court in ***V.S. Krishnan & Ors. v. Westfort Hi-Tech Hospital Ltd. & Ors***., held the following*:*

"*From the above decisions, it is clear that oppression would be made out:*

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis '- vis the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398."

5.21. Unwise, insufficient, or careless conduct of the Director cannot give rise to a claim under Section 241-242 of the Companies Act, 2013. What is required for filing the Company Petition under Section 241-242 of the Companies Act, 2013 is conduct that lacks probity, is unfair and causes prejudice to the Petitioner in respect of his Legal or proprietary right as a Shareholder. Nothing has been demonstrated by the Petitioner to show that the Respondents' conduct lacks probity or has caused substantial prejudice to the Petitioner's legal rights. Therefore, the ingredients required to exercise powers under Sections 241-242 of the Companies Act, 2013 are not made out.

5.22. In terms of the above, **CP No. 26/2022** is dismissed and disposed of. It is clarified that the disposal of the present Petition shall not fetter the Petitioner's right to file an appropriate petition before the appropriate forum for their remedy, if otherwise available under the law.

Sd/-

Prabhat Kumar

Member (Technical)

Sd/-

Sushil Mahadeorao Kochey

Member (Judicial)

/AJ/