NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

18. IA/127/2026CP/95(MB)2026

IN THE MATTER OF

Sudhir Thackersey
Vs
Capricon Realty Private Limited

U/s 241(1), 242(4) of the Companies Act, 2013

Order Delivered on 16.10.2026

CORAM:
SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent: Senior Counsel JP Sen a/w Kunal Vaishnav I/b Kartikeya and Associates (R1)(VC)

For the Respondent: Shyam Kapadia, Counsel a/w Ruchit Dave and Punit Jain I/b Dastur Kalambi and Associates for (R3-4)

ORDER

IA/127/2026: The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//Rahul//

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH – COURT - V

I.A./ 127 (MB) / 2026
IN
C.P. / 95 (MB) / 2026

Under Section 244 of the Companies Act, 2013.

Sudhir Thackersey

Residing at: 131, Silver Arch, 66, L. Jagmohandas Marg, Mumbai – 400 006.

... Applicant

Versus

1. **Capricon Realty Private Limited**
   A company incorporated under the Companies Act, 1956.
   CIN: U51100MH1996PTC100126
   Having its registered office at Sir Vithaldas Chambers, 3rd Floor, 16, Mumbai Samachar Marg, Mumbai – 400 001.
2. **Raoul Thackersey**
   Residing at Plot No. 21/22, Bishops Gate, Breach Candy, Mumbai – 400 026.
3. **Tanya Thackersey**
   Residing at No. 201, Urvashi 66, Nepean Sea Road, Malabar Hill, Mumbai – 400 006.
4. **Tara Thackersey**
   Residing at Plot No. 21/22, Bishops Gate, Breach Candy, Mumbai – 400 026.
5. **Gautam Bhailal Doshi**
   Residing at 201, Tower A, Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013.

... Respondents

IN THE MATTER OF:

Sudhir Thackersey

... Petitioner

Versus

Capricon Realty Private Limited & Ors.

... Respondents

Order Pronounced On: 16.10.2026

Coram:

Shri. Vinay Goel
Hon'ble Member (Judicial)

Shri Charanjeet Singh Gulati
Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Nausher Kohli (PH)

For the Respondents: Sr. Adv. J.P. Sen (VC), Adv. Kunal Vaishnav a/w Grishma Mody i/b Kartikeya & Associates for R1 (PH)
Sr. Adv. Mr. Venkatesh Dhond (VC) a/w Ms. Krishma Rao i/b Dastur Kalambi & Associates for R2 (PH)
Adv. Shyam Kapadia i/b Dastur Kalambi & Associates for R3 & R4 (VC)

ORDER

1. The present Application has been filed by the Applicant, invoking the proviso to Section 244(1) of the Companies Act, 2013 ("**Act**"), seeking waiver of the eligibility criteria prescribed under Sub clause (a) and (b) of Section 244(1) of the Act, in order to enable adjudication of the Company Petition filed under Section 241 and 242 of the Act.

2. **Brief facts as per the Application:**

2.1 It is submitted that Respondent No. 1 Company is a closely held family company and has, at all material times, functioned in the nature of a quasi-partnership, founded upon familial relationships, mutual confidence and an understanding regarding participation in its management and affairs. The Applicant, Respondent No. 2 ("Raoul") and Respondent Nos. 3 and 4 are members of the same family. According to the Applicant, the affairs of the Company were historically conducted on the basis of consensus, mutual trust and family understanding rather than solely on the basis of majority rule.

2.2 The Applicant submits that he was a promoter-director of Respondent No. 1 Company from its inception and was actively involved in its management and affairs, including as Chairman and Managing Director for several years. The Applicant further submits that the participation of family members in the Board and management was pursuant to the understanding that the business and affairs of the Company would continue to remain within the family and be collectively managed. Reliance is placed, inter alia, upon the family arrangements, including the 2011 MoU and 2014 MoU, which, according to the Applicant, reflected the understanding regarding inter se rights, participation and decision-making in the family businesses, including Respondent No. 1 Company.

2.3 According to the Applicant, following the implementation of the 2020 MoU, Respondent No. 2 consolidated his shareholding and thereafter exercised majority control to exclude the Applicant from the management and affairs of the Company. The Applicant refers to various acts alleged in the accompanying Company Petition, including changes in Board processes, curtailment of his tenure as Managing Director, withdrawal of his executive privileges and his eventual exclusion from the decision-making process.

2.4 The Applicant submits that such conduct amounts to more than a mere exercise of majority rights and constitutes a breach of the understanding on the basis of which the Company had been operated. It is contended that the exclusion of the Applicant, who had been associated with the Company since its inception and had participated in its management for several years, is oppressive, particularly in the context of the Company being a quasi-partnership.

2.5 With regard to the shareholding of Respondent No. 1 Company, the Applicant submits that, apart from Respondent No. 2 and Bhishma Realty Limited ("Bhishma"), another family-controlled entity, no shareholder holds more than 10% of the equity share capital. It is submitted that Bhishma itself is substantially controlled by Respondent No. 2, who holds approximately 49.25% thereof, while Respondent No.

1 Company holds approximately 27.99%, as stated to be reflected in the Annual Report for Financial Year 2024-25. On this basis, the Applicant submits that Respondent No. 2 exercises effective control over the substantial shareholding in Respondent No. 1 Company, rendering it difficult for the Applicant to satisfy the statutory eligibility requirements under Section 244(1) of the Act. The Applicant therefore submits that the present case involves exceptional circumstances warranting exercise of the Tribunal's power under the proviso to Section 244(1) and accordingly seeks waiver of the said requirements to enable adjudication of the accompanying Company Petition**.**

3. **Reply on behalf of Respondent No. 1**

3.1 Respondent No. 1 submits that the Applicant has neither pleaded nor demonstrated any exceptional circumstances warranting waiver under the proviso to Section 244(1) of the Act. It is contended that the present Application is also an abuse of process, particularly in view of the multiple proceedings already initiated by the Applicant concerning substantially the same disputes, family arrangements, shareholding and management of Respondent No. 1 Company.

3.2 Respondent No. 1 submits that the Applicant holds 122 equity shares, constituting 1.37% of the shareholding of Respondent No. 1 Company. It is submitted that, on the Applicant's own showing, there are two shareholders holding more than 10% of the equity share capital, namely Bhishma and Respondent No. 2. Therefore, Bhishma is a shareholder satisfying the threshold under Section 244(1)(a). The attempt of the Applicant to treat Bhishma as an alter ego of Respondent No. 2, on the basis of alleged control or beneficial ownership, raises disputed questions which cannot be determined at the stage of considering waiver and cannot result in a statutorily eligible shareholder being disregarded for the purposes of Section 244(1).

3.3 Respondent No. 1 further submits that, in a waiver application arising from a petition under Sections 241 and 242 concerning Bhishma, filed by Ms. Devaunshi Mehta, who holds 5.16% in Respondent No. 1 Company, similar allegations have been made against Respondent No.

1 and Respondent No. 2. It is also submitted that, although there are approximately 103 other shareholders, the Applicant has not impleaded or sought to join with any other shareholder. In particular, approximately 100 outside shareholders collectively hold 15% of the share capital, while Ms. Devaunshi Mehta, the Applicant's daughter, holds 5.16% in Respondent No. 1 Company and is herself a petitioner in related proceedings. According to Respondent No. 1, the Applicant's decision to pursue the proceedings individually, despite the availability of other shareholders and without attempting to join hands with them, does not constitute an exceptional circumstance warranting waiver.

3.4 It is submitted that the Applicant's contention that the statutory threshold is incapable of compliance on account of alleged "consolidated majority control" seeks to raise disputed questions relating to beneficial ownership, family arrangements and alleged conduct concerning other entities as a threshold issue under Section 244. Respondent No. 1 submits that the jurisdiction at the waiver stage is limited and does not contemplate adjudication of such disputed questions on merits.

3.5 Respondent No. 1 further submits that a substantial part of the Applicant's case concerns his alleged exclusion from management, his tenure as Managing Director, Board and AGM procedures and recording of minutes. It is contended that these are essentially personal or directorial grievances and do not, by themselves, constitute exceptional circumstances for bypassing the statutory requirements under Section 244(1). Respondent No. 1 submits that the Applicant continues to be a director of the Company and, according to it, continues to receive substantial benefits from the Company.

3.6 Respondent No. 1 submits that the Applicant has already instituted Suit No. 150 of 2024 before the Hon'ble Bombay High Court, in which Respondent No. 1 is Defendant No. 7, raising issues concerning his alleged exclusion from management and his rights in relation to the control of Respondent No. 1 Company. It is further submitted that, in Counter Claim No. 8 of 2025, the Applicant, as Karta of Sudhir

Thackersey HUF ("SKT HUF"), has asserted that the shares and assets of Respondent No. 1 Company are owned by the SKT HUF and are liable to be partitioned amongst its coparceners. According to Respondent No. 1, the Applicant is thus seeking to re-agitate the same disputes in the present proceedings by characterising them as oppression and mismanagement.

3.7 Respondent No. 1 also refers to Company Petition No. 205 of 2025, filed under Section 59 of the Act by Ms. Devaunshi Mehta (Devaunshi Mehta nee Thackersey v. Bhishma Realty Ltd. & Ors.), wherein the Applicant is Respondent No. 3 and is described as an existing shareholder and director of Bhishma, holding shares in his individual capacity and jointly with his wife. It is submitted that the said petition also challenges the implementation of the alleged MOU dated 16 January 2020, including transactions relating to the shares of Respondent No. 1 Company, and contains allegations of fraud against Respondent No. 2. Respondent No. 1 seeks leave to refer to and rely upon the said proceedings as and when necessary.

3.8 Respondent No. 1 further submits that the Applicant issued a termination notice in October 2025 in respect of the long-standing leave and licence arrangement for the registered office premises of Respondent No. 1 at Sir Vithaldas Chambers and surrendered his tenancy to the landlord trust. It is contended that the Applicant thereby acted against the interests of the Company. The Applicant also filed a complaint dated 07.10.2025 before the Registrar of Companies concerning the conduct of the AGM, including matters which form part of the present Application.

3.9 According to Respondent No. 1, the aforesaid proceedings and actions demonstrate that the disputes concerning the 2011 and 2014 MoUs, the 2020 MoU, distribution and beneficial ownership of shares in various entities, and the Applicant's alleged exclusion from management are already the subject matter of multiple proceedings.

3.10 Respondent No. 1 submits that the Applicant's case for waiver principally rests upon three grounds. First, the Applicant relies upon

the alleged quasi-partnership nature of Respondent No. 1 Company and the legitimate expectations arising from the family arrangements and the 2011, 2014 and 2020 MoUs. Respondent No. 1 contends that these very arrangements are already the subject matter of proceedings before the Hon'ble Bombay High Court and this Tribunal, wherein the Applicant has taken different positions, including the assertion of beneficial ownership of the Company's shares through the SKT HUF.

3.11 Second, the Applicant relies upon his alleged continuous participation in management and subsequent exclusion. Respondent No. 1 submits that the events relied upon by the Applicant, including Board and AGM proceedings between 2023 and 2026, reduction of his tenure as Managing Director, and disputes concerning the conduct and recording of meetings, at the highest, disclose intra-board and directorial disputes and do not constitute exceptional circumstances for waiver under Section 244(1).

3.12 Third, the Applicant contends that the statutory threshold is rendered illusory by the alleged consolidated majority control of Respondent No. 2 and his alleged control over Bhishma. Respondent No. 1 submits that statutorily eligible shareholders do exist and are not prevented from approaching the Tribunal. The question whether Bhishma is controlled by Respondent No. 2 or whether the shareholding structure resulted from any inequitable conduct involves disputed questions which cannot be conclusively determined at the waiver stage.

3.13 Respondent No. 1 therefore submits that the present Application seeking waiver under the proviso to Section 244(1) be dismissed in limine, with costs, and that consequently the accompanying Company Petition be held not maintainable for want of compliance with Section 244(1) of the Act.

4. **Reply on behalf of Respondent No. 2**

4.1 It is noted that the Reply filed by Respondent No. 2 substantially reiterates the submissions made by Respondent No. 1. The additional submissions of Respondent No. 2 are dealt with hereinbelow.

4.2 Respondent No. 2 submits that, at the Board Meeting held on 06.03.2017, the Applicant expressed his desire to relinquish the office of Chairman. The Applicant's decision was accepted and Respondent No. 2 was appointed Chairman of the Board at the meeting held on 10.04.2017. Respondent No. 2 submits that he has thereafter continued as Chairman and Joint Managing Director. The Applicant, however, continued as Managing Director and Director of the Company, primarily to ensure continuity of the benefits being extended to him.

4.3 It is further submitted that, by a Board Resolution dated 23.02.2023, the Board authorised Respondent Nos. 2 and 3, in place of the Applicant and Respondent No. 2, to invest the surplus funds of the Company, the authority at the relevant time being up to Rs.300 Crores. Respondent No. 2 submits that the Applicant was present at the said meeting and did not object to the resolution, and that his objection to the same has been raised only subsequently.

4.4 Respondent No. 2 further submits that the Applicant's tenure as Managing Director was reduced pursuant to a valid resolution passed at the Annual General Meeting held on 12.09.2023, whereby his tenure was to come to an end on 31.03.2024. Thereafter, the Applicant continued as a Director of the Company.

4.5 It is submitted that the Applicant has also filed Counter Claim No. 8 of 2025 before the Hon'ble Bombay High Court as Karta of the SKT HUF, wherein he has claimed that the entire shareholding of Respondent No. 1 Company and its underlying assets and properties belong to the SKT HUF and ought to be partitioned amongst its coparceners. Respondent No. 2 submits that such a claim is inconsistent with the Applicant's present assertion that Respondent No. 1 Company is a quasi-partnership between individual family shareholders founded upon personal relationships and legitimate expectations concerning management and control. It is submitted that Respondent No. 2 has filed Interim Application No. 4196 of 2025 challenging the maintainability of the said Counter Claim, in which Respondent No. 1 is Defendant No. 9.

4.6 It is submitted that the Company had originally been incorporated as a public limited company and was converted into a private limited company only in 2022. Further, the Company has operated as a distinct legal entity in accordance with its constitutional documents and the Companies Act, and its affairs have been professionally managed. The plea of quasi-partnership is therefore stated to be an afterthought intended to convert the Applicant's individual grievances into a case of oppression and mismanagement. Accordingly, Respondent No. 2 submits that the Applicant has failed to establish any exceptional circumstance warranting waiver under the proviso to Section 244(1) of the Act and, therefore, seeks dismissal of the present Application.

5. **Reply on behalf of Respondent No. 3 and 4**

5.1 Respondent No. 3, while adopting the submissions made by Respondent No. 2, opposed the waiver sought by the Applicant and submitted that the present Application is liable to be dismissed. Further, it is noted that no separate reply has been filed on behalf of the Respondent No. 4

6. **Findings and Analysis**

6.1 Heard the Ld. Counsels for the parties and perused the record. We have given our thoughtful consideration to the pleadings and submissions.

6.2 Before proceeding to the issue, it is apposite to take note of the relevant extract of the order dated 23.09.2026 passed by this Tribunal, which is as under:

> *"Today, Ld. Sr. Counsel for Respondent No. 1 concluded his arguments. Ld. Counsel for Respondent Nos. 2, 3 and 4 have been heard. It is stated that Respondent No. 5 has been dropped from the array of parties, as no relief has been sought against Respondent No. 5.*
> *Accordingly, the matter is reserved for orders."*

6.3 The Applicant is a member of Respondent No. 1 Company and admittedly holds 122 shares, constituting approximately 1.37% of its shareholding. The Applicant's case is that Respondent No. 1 is a closely

held family company which has historically been conducted on the basis of family understanding and mutual confidence and that the 2011 and 2014 MoUs reflected such understanding. It is further alleged that, following implementation of the 2020 MoU, Respondent No. 2 consolidated control over the Company and the Applicant was subsequently excluded from its management, including by reduction of his tenure as Managing Director and curtailment of his participation in the affairs of the Company. The Applicant also relies upon the alleged control exercised by Respondent No. 2 over Bhishma Realty Limited and contends that, in the circumstances, the statutory threshold under Section 244(1) is practically impossible of being satisfied.

6.4 The Respondents, on the other hand, contend that the Applicant has not established any exceptional circumstance warranting waiver. It is submitted that Bhishma Realty Limited is itself a shareholder holding more than 10% of the share capital and that there are also a substantial number of other shareholders who could, in principle, join the Applicant. The Respondents further contend that the Applicant's grievances concerning his management role, the MoUs and the control of the Company are already the subject matter of proceedings before the Hon'ble Bombay High Court and this Tribunal. It is also contended that the Applicant's assertion regarding the quasi-partnership nature of the Company is inconsistent with the stand taken by him in Counter Claim No. 8 of 2025 as Karta of the SKT HUF.

6.5 It is important to note that the Applicant admittedly does not satisfy the eligibility requirement prescribed under Section 244(1)(a) of the Act and has filed the present Application seeking waiver thereof. The limited issue for consideration is whether the facts and circumstances of the present case warrant exercise of the power of waiver under the proviso to Section 244(1). For ease of reference, the relevant extract of Section 244 of the Act is reproduced hereinbelow:

> *"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)….

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."

6.6 It is important to note that, while Section 244(1)(a) prescribes the eligibility requirements for members seeking to apply under Section 241, the proviso also empowers this Tribunal to waive all or any of the said requirements. Such proviso, however, cannot be applied mechanically in every case merely on the assertion that the Applicant is unable to garner the requisite 10% of the voting share. In the present case, the Applicant seeks waiver primarily on the ground that, having regard to the shareholding and control structure of Respondent No. 1 Company, the statutory threshold under Section 244(1)(a) cannot be satisfied. In support thereof, the Applicant has relied upon the judgment of the Hon'ble NCLAT in ***Cyrus Investments Private Limited & Anr. v. Tata Sons Limited & Ors., 2017 SCC OnLine NCLAT 261***. It is in this context that the Hon'ble NCLAT laid down certain parameters for exercise of the power of waiver. The relevant observations are reproduced hereinbelow:

"150. The Tribunal is not required to decide merit of (proposed) application under Section 241, but required to record grounds to suggest that the applicants have made out some exceptional case for waiver of all or of any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244. Such opinion required to be formed on the basis of the (proposed) application under Section 241 and to form opinion whether

allegation pertains to 'oppression and mismanagement' of the company or its members. The merit cannot be decided till the Tribunal waives the requirement and enable the members to file application under Section 241.

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

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

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

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

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

152. The aforesaid factors are not exhaustive. There may be other factors unrelated to the merit of the case which can be taken into consideration by the Tribunal for forming opinion as to whether application merits 'waiver'."

6.7 In addition to the aforesaid factors, the Hon'ble NCLAT has also taken into consideration certain exceptional circumstances, the relevant extract of which is reproduced hereinbelow:

"160. From the aforesaid summary of shareholding we find that except Mr. Ratan Naval Tata (at serial no. 22) having issued shareholding of 31.43% and Mr. Narotam S. Sekhsaria (at serial no. 44), having 17.01% shareholding capital of the company, none of the 49 member(s) are eligible to file an application under Section 241, individually having less than 10% of the shareholding.

161. That means in the context of present case, except that the minority shareholders join together, i.e. either six in numbers or such numbers of members whose joint shareholding will come up to 10% of the issued share capital of the Company, which will be also not less than 3 to 4 members, none of the 49 shareholders can file an application under Section 241 alleging 'oppression and mismanagement'. It will remain only in the hands of major shareholders, namely Mr. Ratan Naval Tata or Mr. Narotam S. Sekhsaria, who only have right and their prerogative to file such application.

162. One or the other minority shareholder cannot be asked or directed to form a group of 10% of the member(s) that means six person(s) in the present case, as it will be dependent on the prerogative of the other member(s).

163. We are of the view that this is one of the exceptional and compelling circumstances, which merit the application for 'waiver' subject to the question whether (proposed) application under Section 241 relates to 'oppression and mismanagement'.

164. Appellants have pleaded and not disputed by respondents is that the valuation of the company being in the region of at least 'Six lakhs Crores'. The interest of the appellants in the overall value of the company would be over 'one lakh crore'. Therefore, the interest of the appellants in the overall value of the company is 1/6th of the total value of the company. On the other hand, the value of the preference share holding would be only Rs. 291 crores, who do not carry voting

rights other than in the exceptional circumstances found in Section 47(2) of the Companies Act 2013. The interest of the appellants to the extent of 'one lakh crores' of the overall value of the company whose valuation being in the region is about six lakhs crores, is another factor, which we have kept in our mind to answer the application for 'waiver' in favour of the appellants.

…

167. Thus, prima facie, it appears that with regard to affairs of the other Tata Group Companies, namely Tata Steel Limited, Tata Motors Limited, Tata Teleservices Limited, The Tata Power Company Limited, Air Asia (India) etc., the 1st respondent company has some control and therefore, at the stage of 'waiver' it cannot be held that the matter relates to other companies or third company.

168. This is another exceptional factor, we have noticed in this case, which merit 'waiver' in favour of appellants to file an application under Section 241.

…"

6.8 The Hon'ble NCLAT, after taking into consideration the aforesaid factors and exceptional circumstances of that case, viz., that the minority shareholders could not be required to constitute a group of 10%, the applicants' substantial interest being approximately one-sixth of the total value of the company, and the provisions of the Articles of Association concerning control of the Board of Directors, granted waiver to the Appellants. Applying the aforesaid principles, the Applicant admittedly satisfies the first requirement, being a member of Respondent No. 1 Company. Further, on consideration of the allegations contained in the proposed petition, the grievances concerning the Applicant's alleged exclusion from management, reduction of his tenure as Managing Director and the alleged departure from the family understanding prima facie relates to oppression and mismanagement.

6.9 The primary question, therefore, is whether the Applicant has established 'an exceptional circumstance' warranting waiver. The Applicant primarily relies upon the alleged practical impossibility of satisfying the statutory threshold, the alleged control of Bhishma Realty Limited by Respondent No. 2, the quasi-partnership nature of Respondent No. 1 Company and his long-standing participation in its management followed by his alleged exclusion.

6.10 It is important to note that the Applicant holds 1.37% of the share capital and that Respondent No. 1 Company has 109 shareholders, including the Applicant. Accordingly, the one-tenth threshold comprises 11 members. Excluding the Applicant, Respondent Nos. 2 and 3, Bhishma Realty Limited and Jasna Thackersey, there are approximately 104 other shareholders collectively holding 21.77% of the share capital. The Respondents have further submitted that approximately 100 outside shareholders hold 15% of the share capital, which has not been rebutted by the Applicant. Thus, while the threshold may be difficult for the Applicant to satisfy individually, the material on record does not establish that the statutory requirement is incapable of being satisfied by obtaining the support of other members.

6.11 As regards Bhishma Realty Limited, the Applicant has alleged that the said entity is substantially controlled by Respondent No. 2. Even assuming the Applicant's contention to be correct and excluding Bhishma Realty Limited for the aforesaid limited purpose, the existence of other shareholders remains undisputed. Consequently, the said circumstance, by itself, does not render the statutory threshold incapable of being met.

6.12 The Applicant has also relied upon the alleged quasi-partnership nature of Respondent No. 1 Company and the family arrangements reflected in the 2011 and 2014 MoUs. The Applicant's long-standing association with the Company and his participation in its management, followed by his alleged exclusion, may be relevant in the Sections 241 and 242 proceedings. However, at the stage of considering waiver, the effect and interpretation of the said family arrangements are disputed and are also

the subject matter of proceedings before the Hon'ble Bombay High Court. Therefore, these circumstances, by themselves, do not constitute an exceptional circumstance warranting waiver.

6.13 The Respondents have further relied upon the stand taken by the Applicant in Counter Claim No. 8 of 2025, wherein, as Karta of the SKT HUF, he has asserted rights in respect of the shares and assets of Respondent No. 1 Company. The said stand is materially different from the present case founded upon the alleged quasi-partnership and family understanding. However, it is not necessary for this Tribunal, at the stage of considering waiver, to finally determine the effect or legal consequences of the respective claims concerning ownership of the shares and assets. The said circumstance is relevant only to the extent that the very family arrangements and rights upon which the Applicant relies are presently disputed in other proceedings and, therefore, do not, in the circumstances of the present case, constitute an independent exceptional ground for waiver.

6.14 We have also considered the judgment in *Cyrus Investments*. The circumstances noticed therein included the inability of the minority shareholders to constitute the requisite threshold by themselves, their substantial interest in the value of the Company and the particular provisions governing the composition and control of the Board. The said circumstances cannot be treated as exhaustive requirements for grant of waiver. At the same time, in the present case, the Applicant holds approximately 1.37% of the share capital, there are other shareholders available and no material has been placed before us demonstrating any structural restriction which effectively prevents the Applicant from seeking the support of other members. The mere assertion that the Applicant is a minority shareholder and cannot muster the requisite 10% shareholding, by itself, cannot constitute an exceptional circumstance.

6.15 In support of his contention that the present case is fit for grant of waiver, the Applicant has also relied upon the judgments of this Tribunal in ***I.A. No. 62 of 2026 in C.P. No. 28 of 2026*** and ***M.A. No.***

1544/2019 in C.P. No. 1498/2019, wherein, upon consideration of the judgment in *Cyrus Investments*, waiver was granted. However, the said decisions were rendered having regard to the particular facts and circumstances of those cases. Further, these decisions do not place emphasis on the 'exceptional circumstances' taken into consideration by the Hon'ble NCLAT in their judgment in *Cyrus Investments*, while granting waiver. Accordingly, the said decisions cannot be construed as laying down a general principle warranting waiver in cases where the Applicant does not meet the requisite eligibility prescribed under Section 244(1) of the Act.

7. In view of the facts and circumstances of the case and the discussion hereinabove, we are of the view that the Applicant has failed to demonstrate any exceptional circumstance warranting waiver of the requirements prescribed under Section 244(1)(a) of the Act. Accordingly, I.A. No. 127 of 2026 is **dismissed**. Consequently, C.P. 95 of 2026, not having satisfied the eligibility requirements under Section 244(1)(a) of the Act, is **not maintainable** and is also accordingly **dismissed**. Further, since the C.P. 95 of 2026 has been dismissed as non-maintainable, any Interlocutory Application/Company Application filed in this Company Petition (C.P. 95 of 2026) become infructuous and are **disposed of** as such.

Sd/-	**Sd/-**
Vinay Goel	**Charanjeet Singh Gulati**
Member (Judicial)	Member (Technical)

OmkarD.