

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) No. 120/2025
(IA Nos. 1354 & 1355/2025)

In the matter of:

M/S.APEX LUMINAIRES PVT.LTD.,

A Company registered under the Companies Act, 1956,
having its Registered Office at
No.716, 3rd Block, Koramangala,
Bengaluru 560 034,
Represented by its Director,
Mr.Ajay Gupta.

...APPELLANT NO. 1

MR. SHRINGERI SESHAGIRI,

Son of Shri. Anjaiah Shetty,
Aged about 72 years,
M/s.Apex Luminaires Pvt.Ltd.,
Director,
Registered Office at
No.716, 3rd Block, Koramangala,
Bengaluru 560 034.

...APPELLANT NO. 2

MR. AJAY GUPTA.

Son of Sri T.R.Ramanatha Gupta,
Aged about 44 years,
Director of M/s. Apex Luminaires Pvt. Ltd.,
Residing at No.2288, Gupta Castle,
2nd Cross, 3rd Main Road,
Old Airport Road, HAL 3rd Stage,
Vimanapura, Bengaluru 560 017.

...APPELLANT NO. 3

MRS. SHRINGERI VASUNDARA,

wife of Mr.Shringeri Seshagiri,
aged about 66 years,
Director of M/s. Apex Luminaires Pvt. Ltd.,
Residing at No.716, 3rd Block,
Koramangala, Bengaluru 560 034.

...APPELLANT NO. 4

MRS. CHAITRA SHRINGERI,

Daughter of Mr.Shringeri Seshagiri,
aged about 40 years,

Director of M/s. Apex Luminaires Pvt. Ltd.,
Residing at No.2288, Gupta Castle,
2nd Cross, 3rd Main Road,
Old Airport Road, HAL 3rd Stage,
Vimanapura, Bengaluru 560 017.

...APPELLANT NO. 5

V

G. N. THIRUMALESH,
Son of Shri Nayanan M.R.
aged about 51 years,
residing at No. C, 404
Mantri Flora, iblur gate, Sarjapur Road,
Bengaluru 560 102.

...RESPONDENT

With
Company Appeal (AT) (CH) No. 121/2025
(IA No. 1356/2025)

In the matter of:

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MRS. CHAITRA SHRINGERI,
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Bengaluru 560 102.

...RESPONDENT

Present :

For Appellants : Mr. PH. Arvinth Pandian, Senior Advocate
For Mr. PJ. Rishikesh, Advocate
For Respondent : Mr. Gaurav Kumar, Advocate

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

These are set of two company appeals.

2. Company Appeal (AT) (CH) No. 120/2025, questions the propriety of the impugned order dated 11.07.2025, that has been passed in CA No. 79 of 2023,

as it was preferred by the Appellant herein, in C.P No.125/BB/2022, wherein the application thus preferred by the Appellant question the maintainability of the company petition filed by the Respondents under Section 241 – 244 of the Companies Act, 2013, has been rejected.

Company Appeal (AT) (CH) No. 121/2025

3. In the connected company appeal i.e., Company Appeal (AT) (CH) No. 121/2025, which too has been preferred by the Appellant, who are the opposite party to the proceedings of the C.P No.125/BB/2022 questions the propriety impugned order of 11.07.2025, whereby CA No. 59 of 2023, as it was preferred by the Respondent for seeking an amendment for introduction of new pleading and the relief clause in the memorandum of the company petition has been allowed.

4. Having regard to the chronology of facts and the issues involved, we shall first deal with Company Appeal (AT) (CH) No. 121/2025. In this appeal, the Respondent/Petitioner had filed a company petition before the Ld. Tribunal on 19.09.2022, seeking, inter alia, a declaration that the Board Resolution dated 31.12.2021 be declared null and void, and for a further direction to conduct an enquiry through a forensic audit into the affairs of the 1st Respondent Company in relation to the salary drawn by the parties, purchases, and inventories of the 1st Respondent. He has also sought the appointment of an independent valuer to carry out a fair valuation of the 1st Respondent Company.

5. While this company appeal was pending consideration after the exchange of objections, the Respondent is said to have filed an amendment application on 14.04.2023. In the said amendment application, the Appellant contended that, claiming himself to be one of the directors of the Respondent company, he holds 24,99,000 equity shares constituting 50% of the total equity shareholding. As on the date of filing the company petition, it is contended by the Petitioner that, being a subscriber to the memorandum, he holds the aforesaid equity shares of ₹10 each in the capital of the Respondent company, which represents 50% of the total equity shareholding.

6. He submits that Respondents No. 2 to 4 of the company petition are the shareholders, and they claim to hold 50% of the equity shareholding of the Respondent's company, as being the members of the same family, and Respondent No. 2 claimed to be the managing director of the Respondent company, and Respondent No. 3, 4 & 5 too, are the director of the company. They have been shown to be having a relationship with one another, being son-in-law, wife, and daughter. In the amendment application, which was thus preferred, the Respondent/Applicants they had sought an amendment in the relief clause of the following nature:

*"1. In the Main Reliefs claimed at page 26, after prayer A),
Add Prayer A1, A2 and A3 as follows*

*A1. Declare that the transfer of petitioner's 24,99,000 equity
shares of the 1st respondent company in favour of 3rd and
the 5th respondent is null and void;*

- A2. To restore the share holding pattern of the 1st respondent company as prevailed prior to the impugned transfer of shares on 30-12-2021 and*
- A3. Direct the respondents No.2 to 5 to render accounts and bring back the misappropriated funds to the 1st respondent company.*
- A4. Direct the respondents No.2 to 5 to refund back to the 1st respondent company, the illegal salaries that they have drawn from the 1st respondent company from 1st January, 2022 up to the date of refund."*

This was also correspondingly followed by an amendment sought in the pleadings, as detailed in Paragraph 2 of the amendment application, extending from Paragraph 6.16 to Paragraph 6.21. Various contentions have been raised by the learned Counsel for the parties, and in particular, the Appellant has argued that the nature of the amendment sought completely changes the complexion of the company petition itself. It is contended that it amounts to introducing an altogether new cause of action, because, according to the Appellant, the said relief was already available to the Petitioner/Applicants at the time when the company petition was originally instituted. However, the Respondent, having not chosen to seek that relief at the appropriate stage, even though it was available to be pleaded, could not introduce it at a later stage, as doing so would be contrary to the governing principles applicable for seeking an amendment to the relief clause and the pleadings.

7. In order to address the argument advanced by the learned Counsel for the Appellant, this Appellate Tribunal posed a simple question to the Respondent as

to how the order allowing the amendment application could be justified in the manner in which it was rendered by the learned Tribunal. The learned Tribunal, after recording the rival contentions of the parties in support of and in opposition to the amendment application, proceeded to record its analysis in Paragraph 6 of the impugned order. We have heard the learned Counsel for the parties meticulously on the findings recorded by the learned Tribunal at the stage of considering the amendment application.

8. We are of the view that the learned Tribunal has not been able to situate its judgment allowing the amendment application within the framework of the parameters required to be considered for granting such an amendment. No specific observation or adjudicatory reasoning has been provided by the learned Tribunal, nor has any finding been recorded regarding the basis for its decision in relation to C.A. No. 59 of 2023. We are satisfied that the impugned judgment does not record any reasoning, nor does it apply the test required for consideration of an amendment application. Although various vital facets are being sought to be introduced for the first time by the learned Counsel for the Applicant, i.e., the Respondent/Petitioner herein the learned Tribunal, apart from extracting certain portions of the pleadings relied upon by the Applicant while pressing the amendment application, has not recorded any findings to justify the allowing of the amendment. The impugned order lacks judicial and rational application of mind to justify the necessity for accepting the amendment application as preferred by the Applicant/Respondent, so as to bring it within the legal framework

governing consideration of amendments, particularly in light of the nature of the relief that has been modified in the amendment application. Although much could be examined by this Appellate Tribunal while considering the rival contentions of the learned Counsel for the parties, we are deliberately refraining from recording any finding on the propriety of the amendment, whether the amendment sought was necessary for deciding the lis; whether it attempts to introduce an altogether new case; whether it seeks to override existing pleadings in the company petition so as to amount to withdrawal of an admission; or any other facets that ought to have been considered by the learned Tribunal. This is especially pertinent given that the nature of the relief ought to have been examined in light of the principles, though not directly applicable, contained under Order VI Rule 17 (Amendment of Pleadings) and the implications arising from Order II Rule 2 (Relinquishment of Part of a Claim) of the Code of Civil Procedure (CPC).

9. Exclusively on the ground that a very evasive observation and finding has been recorded by the Ld. Tribunal while passing the order allowing the amendment application. We are of the view that when an amendment is sought to be introduced at a belated stage during the pendency of a petition, once it is permitted to be introduced, it amounts to treating it as if it existed on the date of filing of the principal company petition. Therefore, it was required to be considered with due diligence and subjected to proper reasoning by the Tribunal to justify the necessity of the amendment.

10. In that eventuality, the application for amendment has to be strictly construed to determine whether the nature of the amendment, in relation to the relief sought and the pleadings filed in support of it, satisfies the test of reasonableness. An adjudicatory body is required to consider the propriety of the amendment and its consequential implications on the principal proceedings of the company petition, including the bearing the proposed amendment will have and whether it would either augment or deprive the opposite party of the right to defend itself against the cause now sought to be introduced by the amendment application.

11. After meticulously examining the impugned order, we are of the view that merely recording the submissions or extracting the pleadings in the order, as raised by the Ld. Counsel or the parties themselves, does not by itself suffice to place the order within the definition of an adjudication. An adjudication requires a conscious and judicious application of mind. Simply copying facts and arriving at a conclusion through a single-line observation will not satisfy the test of adjudication.

12. Thus, the impugned order dated 11.07.2025, passed on CA No. 59 of 2023 seeking an amendment to the company petition filed in C.P. No. 125/BB/2022, is hereby quashed. The matter is remitted to the Ld. Tribunal to reconsider the amendment application in accordance with law, by undertaking an analytical and judicial determination, testing the propriety of the proposed amendment in the context of the issues under consideration in the company petition and assessing

its necessity under the given circumstances, and thereafter passing an appropriate order in accordance with law.

13. At this juncture, it is made clear that this order shall not be construed as an attempt on our part to make any observation on the merits of the amendment application, as the same is to be exclusively considered by the Ld. Tribunal on its own merits and adjudicated upon after subjecting the application to the parameters prescribed for consideration of an amendment, which must be satisfied before such an application is allowed. Subject to the aforesaid, the company appeal stands allowed. All interlocutory applications stand closed.

Company Appeal (AT) (CH) No. 120/2025

14. Company Appeal (AT) (CH) No. 120/2025, has been preferred by the Appellant Respondent being aggrieved as against the impugned order that was passed in CA No. 79 of 2023 in C.P No.125/BB/2022, being the proceedings being held under Section 241 - 244 of the Companies Act, 2013, as decided by the Ld. NCLT Bengaluru, Bench.

15. The issue involved herein is that the question of maintainability of the company petition was sought to be agitated by the Appellant, but this application has been rejected by the impugned order. Primarily, the argument of the Ld. Counsel for the Appellant is that, owing to the shareholding structure held by the Respondent/Petitioner on the date of institution of the company petition, i.e., 08.08.2023, the petition at their behest would not be maintainable. In relation

thereto, the Appellant filed an IA, being CA No. 79 of 2023, raising a preliminary objection regarding the tenability of the company petition at the instance of the Respondent/Petitioner, who, in the absence of holding any shares, were not ‘members’.

16. For the aforesaid purpose, the Ld. Counsel for the Appellant has drawn the attention of this Ld. Tribunal to the provisions contained under Section 241 of the Companies Act, 2013. Although the entire provision under Section 241 may not be relevant for deciding the issue of sustainability of an application raising a question of maintainability, particularly as against the petition preferred by the Respondent under Sections 241–244 of the Companies Act, 2013, he submits that, for the purposes of proceedings under Section 241, actions alleging oppression and mismanagement may be initiated by “any member of the company who complains that...”, as provided under Section 241(1).

17. He further submits that, in order to sustain proceedings under Sections 241–244 of the Companies Act, 2013, it is a precondition that the Petitioner must be a member of the company. The term member has been defined under Section 2(55) of the Companies Act, 2013, which is extracted hereunder:

(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;

18. He submits that the Respondent/Petitioner to the company petition does not fall within any of the classifications of a ‘member’ as defined under Section 2(55) of the Companies Act, 2013. Hence, he contends that the company petition filed at their behest would not be maintainable.

19. Primarily, the contention of the Appellant is that, while preferring an application and raising the preliminary question of maintainability of the company petition, if the petition is considered in its entirety particularly in relation to the relief clause, which must be read along with the interim relief application being CA No. 59 of 2023 ,the nature of the relief sought by the Respondent/Petitioner is in the form of a declaration. The Respondent/Petitioner seeks a declaration that the share transfer in favour of Respondents No. 3 and 5, i.e., the opposite parties to the company petition, is null and void, and further seeks restoration of the shares in the name of the Petitioner/Respondent on the ground of forgery and fraud.

20. The manner in which the relief itself has been modulated, either in the company petition and the pleadings raised in support thereto, does not satisfy the test that the Respondent/Petitioner falls to be within the definition of being a member who would be eligible to institute and hold the proceedings under Section 241 of the Companies Act, 2013.

21. The Appellant contended that the annual report pertaining to the transfer of shares, which was submitted on 31.12.2021, clearly showed that the Respondent/Petitioner was not holding even a single share in Opposite Party No. 1 company. Hence, since the Respondent/Petitioner was not holding a single share on the date of filing the company petition, i.e., 19.09.2022, the petition filed at their behest would not be maintainable. Moreover, the company petition was preferred at a significantly belated stage after the expiry of nine months from the date of the share transfer reflected in the annual report dated 31.12.2021. He further submitted that the institution of the company petition is vitiated by mala fides and by concealment of material facts, and that it has been filed without fulfilling the mandatory conditions contemplated under Section 244 of the Companies Act, 2013.

22. The Appellant, in Paras 5.4, 5.5, and 5.6, specifically raised grounds concerning the implications of Section 241 of the Companies Act, 2013, particularly as to who is eligible to maintain a company petition. The application so preferred expressly agitated these grounds on the basis that, even if the averments made in Para 6.5 of the company petition are taken into consideration, they themselves indicate that the Respondent/Petitioner received a sum of Rs. 5.5 crores from Applicants No. 3 and 5 as sale consideration for transferring his entire shareholding in Applicant No. 1 company in favour of Applicants No. 3 and 5 in CA No. 79 of 2023. The relevant pleadings raised by the Appellant in the application, questioning maintainability, are extracted hereunder:

"5.5 It is humbly submitted that MGT-7 was filed by the company showing the shares of the Respondent are transferred to Applicant Nos. 3 & 5. The Respondent is not holding any shares in the Applicant No.1 Company nor he is the Director of the Applicant No.1 Company on the date filing of the Petition. Hence the Respondent has no locus standi in filing the Petition under section 241 and 244 of the Companies Act, 2013 as he has not complied with conditions stipulated under Section 244 of the Companies Act, 2013.

5.6 It is humbly submitted that the Respondent is nor the shareholder of the Applicant No.1 Company, Hence, he has no power to file a Petition under Section 241 to 244 of Companies Act. Section 241 of Companies Act reads as follows:

241. Application to Tribunal for relief in cases of oppression, etc.- (1) Any member of a company who complains that- (a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or (b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter. 151 (2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

5.7 It is humbly submitted that the persons who can apply under Section 241 is given under Section 244 of Companies Act, 2013. Section 244 of the Companies Act read as follows:

244. Right to apply under section 241.- (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: 153 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. 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.

5.8 This clearly goes to show a member should hold not less than 1/10 of the issued share capital of the company to file a Petition under Section 241 of Companies Act, 2013. Respondent herein does not hold any shares in the Applicant No.1 Company at the time of filing Petition No. 125/2022 under Section 241 & 244 of Companies Act, 2013 dated 19-09-2022.

5.9 It is humbly submitted that as the Respondent is not a shareholder in the company, the Petition under Section 241 & 244 of Companies Act, 2013 dated 19-09-2022 filed by the Respondent is not maintainable and has to be dismissed."

23. The Appellant further submitted that, if the MGT-7 is taken into consideration, it shows that the shares of the Respondent/Petitioner, the opposite party to the CA had been transferred to Applicants No. 3 and 5 in CA No. 79 of 2023. Thus, the Respondent/Petitioner was not holding any shares in the Applicant's company, and therefore the restriction under Section 241 of the

Companies Act, 2013, would come into play. This application was objected to by the Respondent/Petitioner by filing an objection on 11.11.2023. If the objection so preferred is taken into consideration, it is evident that, except for answering certain other questions pertaining to the maintainability of the company petition, no response has been provided by the Respondent/Petitioner with respect to the grounds raised in Paras 5.4 to 5.6 of CA No. 79 of 2023. The Respondent/Petitioner has merely narrated other factual aspects in their objection, without developing any specific case demonstrating how they could be considered a member within the meaning of Section 2(55) of the Companies Act, 2013, so as to maintain the petition. None of the averments made in the objection filed by the Respondent/Petitioner make any reference to a para-wise reply to the pleadings raised in the application questioning the maintainability of the company petition, particularly regarding the effect of the Respondent/Petitioner not holding any shares.

24. The Ld. Tribunal rejected the aforesaid application, observing that the transfer of shares was evidenced by the annual report dated 31.12.2021, and that thereafter the Respondent/Petitioner was shown as not holding any shares. However, while analyzing the pleadings raised in the application filed by the Appellant concerning the maintainability of the company petition, the Ld. Tribunal confined its observations to the report of the Registrar of Companies, which had been submitted on 09.08.2023 vide Dy. No. 4187. In that report, the Registrar of Companies considered the complaint alleging that the company had

filed DIR-12 on 17.01.2022, vide SRN No. T72653777, regarding the resignation, attaching only the certified true copy of the board meeting held on 31.12.2021. It is submitted that since neither the original resignation letter nor the request to invalidate the DIR-12 was furnished, and no explanation was provided by the company for failing to attach the original resignation letter, the Registrar presumed the Respondent/Petitioner to be holding shares, thereby treating him as a member of Respondent No. 1 company.

25. The Ld. Tribunal has taken the view that the contention raised by the Applicant/Appellant herein, regarding the theory of resignation of the petitioners to the company petition from the position of Director of M/s Apex Luminaires Private Limited, was not substantiated. It has declined to accept the certified copy said to have been enclosed with Form DIR-12, holding it to be inadmissible as evidence.

26. The Ld. Tribunal has based its finding on the contents of Diary No. 561 dated 30.01.2023, particularly the observation made in Para XIII that, by refusing to hand over the original signed share transfer forms and the original signed resignation letter, the Petitioner was attempting to suppress a material fact, and the Respondents were therefore treated as holding shares in order to maintain their company petition.

27. The Ld. Tribunal, while passing the impugned order, has neither taken into consideration nor recorded any finding regarding the admitted case of the

Respondent/Applicant that, at the relevant point of time when the company petition was preferred, he was not holding shares. This aspect ought to have been considered in the context of the relief sought by them in the main company petition as well as in the interim relief application filed in support thereof. In fact, upon scrutiny of the impugned order, the sole basis for rejecting CA No. 79 of 2023 appears to be the observation that the resignation letter of the Respondent was not available on record. However, the burden of establishing that they were holding shares in Respondent No. 1 company rested upon the Respondent/Petitioner, which they never attempted to discharge; hence, the inference ought to have gone against them.

28. In fact, the observation made by the Ld. Tribunal in the impugned order does not consider the controversy from the perspective that, once the Respondent/Petitioner has instituted the company petition, the burden to prove its maintainability and his status as a member is required to be discharged by him, particularly when such status is put to challenge. His claim of being a member of the company, so as to sustain proceedings under Section 241 of the Companies Act, 2013, must therefore be established by him. The non-furnishing or non-availability of the Respondents' original resignation letter will not automatically confer upon the Respondent/Petitioner the status of a member, especially in view of the admitted position pleaded by them in the company petition namely, that they were not holding any shares on the date the company petition was preferred before the Ld. Tribunal.

29. In this company appeal as well, we are not embarking upon a meticulous scrutiny of the propriety of the impugned order. As we have already observed while deciding the connected company appeal on the question of amendment of pleadings, which has been directed to be reconsidered afresh by the Ld. Tribunal, it is only after orders are passed on the amendment application in terms of the directions issued by this Appellate Tribunal that the application regarding the maintainability of the company petition shall be considered afresh on its own merits. This exercise is to be undertaken without being influenced by any observations made by this Appellate Tribunal in the impugned order or in the course of deciding the two company appeals.

30. The impugned order does not record any finding regarding the stand taken by the Appellant in its application with respect to the provisions contained under Section 241 of the Companies Act, 2013. Moreover, the Respondent/Petitioner has admitted, by seeking restoration of shares in the Respondent company and alleging deprivation on the grounds of fraud and forgery, that such issues were central to the dispute. In fact, the impugned order contains no finding on the effect or manner of transfer of shares pursuant to the annual report dated 31.12.2021, nor does it address the specific plea raised in the context of Section 241 of the Companies Act, 2013. Consequently, the impugned order is perverse as well.

31. For the aforesaid reasons, the impugned order dated 11.07.2025, as rendered in CA No. 79 of 2023, would hereby stand quashed, the ‘company

appeal’ is ‘allowed’. The question of maintainability is remitted back to be considered afresh at the stage when the company appeal itself is considered after the exchange of pleading, by dealing with the question of maintainability as a preliminary question, while deciding the company petition. All pending interlocutory applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

23/12/2025
SN/MS/AK