

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.305 - CP/21(AHM)2024
With
ITEM No.306 - IA/63(AHM)2024

Under Section 241 & 242 r.w. 213 of CA, 2013

IN THE MATTER OF:

Kailash Ramkishan Gupta & Another
V/S
Indian Commodity Exchange Limited & Ors.

.....Applicant

.....Respondent

Order delivered on: 17/10/2025

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT - I, AHMEDABAD**

**IA No. 63 of 2024
In
CP No. 21 of 2024**

*(Application filed under Section 244(1) of the Companies Act,
2013.)*

In the matter of:

1. Kailash Ramkishan Gupta

Residing at
102, Tirth Grandeur,
Opposite Vakil House,
Red Cross Blood Bank Lane,
Paldi, Ahmedabad – 380007.

2. Neptune Overseas Limited

Having its registered office at
No. 1, 4th Floor, H.K. House,
Behind Jivabhai Chambers,
Ashram Road, Ahmedabad - 380 006

... Applicants

Versus

1. Indian Commodity Exchange Limited

Having its registered office at
1002, 21st Century Business Centre,
Upper Ground Floor, Surat
Ring Road, Surat - 395 007

2. Mr. Tridibnath Swain

Managing Director and
Chief Executive Officer
Indian Commodity Exchange Limited
Residing at

B/608, Raheja Park Apartments,
Magudi Main Road,
Agrahara Dasrahalli,
Bengaluru, Karnataka – 560079.

3. Mr. Ranjit Samantaray

Whole Time Director and Chief Regulatory Officer,
Indian Commodity Exchange Limited,
Residing at
C1501, Swapnalok Towers,
Pimpripada Road, Off. Film City Road,
Pimpripada, Malad (East),
Mumbai, Maharashtra
400 097 and also at 249/250,
Yoginagar, Gotri, Vadodara -
390021.

4. Mr. Narayanswamy Iyer

Chief Financial Officer
Indian Commodity Exchange Limited
Residing at
Purab Cottage, 495/A/989,
Lal Chakki Road, Ulhasnagar (East),
Kalyan, Thane - 421004.

5. Mr. Mahendrakumar Kantilal Patel

Residing at
4, Manav Seva Society,
Ranip, Ahmedabad 382 480.

6. Registrar of Companies, Gujarat

Having its registered office at
Registrar of Companies,
ROC Bhavan, Opp. Rupal Park Society,
Behind Ankur Bus Stop,
Naranpura, Ahmedabad – 380013.

7. Regional Director, North Western Region

Having its registered office at
ROC Bhavan, Opp. Rupal Park Society,
Behind Ankur Bus Stop,
Naranpura, Ahmedabad – 380013.

8. Mr. Sanjit Prasad

Residing at:
A15, Army Welfare Society, Army Welfare
Housing Organization, Dara Enclave,
Sector 9, Nerul, Navi Mumbai,
Maharashtra – 400706.

9. Mr. Ghanashyam V. Rao

Working with the Respondent No. 1
At its registered office:
1002, 21st Century Business Centre,
Upper Ground Floor, Surat
Ring Road, Surat - 395007.

10. Ms. Rashim Bagga

Working with the Respondent No. 1
At its registered office:
1002, 21st Century Business Centre,
Upper Ground Floor, Surat
Ring Road, Surat - 395007.

11. Enforcement Directorate

Through Deputy Director
Having office at
11th Floor, Satya One, Opp.
Manav Mandir,
Ahmedabad - 380052.

... Respondents

Order Pronounced On: 17.10.2025

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicants: Mr. Tirth Nayak, Advocate

For the Respondents: Mr. Ravi Pahwa, Advocate for R-1, R-3 &
R-4 and Ms. Prutha Bhavsar Proxy Adv.
for R-11

ORDER
(Per: Bench)

1. This application has been filed by the Applicants namely Kailash Ramkishan Gupta and Neptune Overseas Limited (hereinafter as, "the **Applicants**") under Section 244(1) of Companies Act, 2013 seeking following reliefs:
 - A. *This Hon'ble Tribunal be pleased to allow the present Application and waive requirement specified under Section 244(1)(a) of the Companies Act, 2013;*
 - B. *This Hon'ble Tribunal be pleased to pass any other and further order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.;*
2. The present Interlocutory Application under Section 244(1) of the Companies Act, 2013, seeks waiver of the requirement

under Section 244(1)(a) thereof, to enable the Applicants to maintain the Company Petition No. 21 of 2024 under Sections 241 and 242 of the Act, alleging acts of oppression and mismanagement against Respondent No. 1 - Indian Commodity Exchange Limited.

3. Section 244(1)(a) stipulates that a petition under Sections 241 and 242 can be filed by members holding not less than one-tenth of the issued share capital of the company. The proviso to the said sub-section empowers this Tribunal to waive such requirement in exceptional circumstances, where it is just and equitable to do so, particularly in cases involving allegations of oppression or mismanagement that affect the interests of the company and its members at large.
4. The Applicants claim to collectively hold 5,54,20,499 equity shares in Respondent No. 1, out of its total issued, subscribed and paid-up share capital of 53,35,07,476 equity shares of Rs. 5/- each (aggregating to Rs. 266,75,37,380/-), which exceeds the one-tenth threshold. Of these, 4,82,09,060 shares are held in the Demat Account No. IN301276-30701360 of Applicant No. 2 are under attachment by the

Enforcement Directorate (Respondent No. 11) pursuant to proceedings under the Prevention of Money Laundering Act, 2002 (PMLA). The Applicants contend that such attachment does not divest them of ownership or administrative control, including voting rights, over the attached shares, and thus, they continue to satisfy the eligibility criteria under Section 244(1)(a).

5. That on issuance of the notice, the Respondent No.1, 3, 4 as well as the respondent No.11 (ED) appeared through their Counsel, and the Respondent No. 01 filed the reply (vide Inward Diary No. D-7473) to which the Applicants filed the rejoinder (vide Inward Diary No. D-7541).
6. Further, in compliance with the order dated 07.11.2024, the Applicants filed an amended Interlocutory Application (Inward Diary No. D-8720) by adding Enforcement Directorate as the Respondent No. 11 in the Interlocutory Application.
7. Furthermore, the Respondent No. 11 (Assistant Director, Directorate of Enforcement on behalf of Deputy Director,

Directorate of Enforcement, Ahmedabad), in compliance with the order dated 07.11.2024, filed its reply (**Inward Diary No. D-4175**). The Applicants and the Respondent No.1 also filed their written synopsis on 07.11.2024 and 05.11.2024, respectively, which is available on the DMS Portal.

8. Respondent No. 1 contests the maintainability of the Application, inter alia, on the grounds that the attached shares cannot be reckoned for the purpose of Section 244(1)(a), as their title is sub-judice under PMLA, and vesting of such property in the Central Government upon confiscation (under Section 9 of PMLA) would render the Applicants ineligible. It further argues that no exceptional circumstances exist to warrant waiver, as the alleged acts do not constitute oppression or mismanagement but are mere commercial decisions, and the Applicants' past conduct (including prior regulatory inquiries and litigations) disentitles them to relief. Reliance is placed on the judgment in *Cyrus Investments Private Limited & Anr. vs. Tata Sons Limited & Ors.* [2017 SCC Online NCLAT 261], emphasizing the need for exceptional circumstances.

9. Respondent No. 11 (Enforcement Directorate) has clarified in its reply, and as confirmed in its earlier submission before the Special Court (PMLA) in CRMA No. 1708 of 2023, that the attachment is confined to the shares as "proceeds of crime" under Section 2(1)(u) of PMLA, without impinging on the Applicants' administrative control or voting rights in respect of Respondent No. 1. The underlying PMLA proceedings (Case No. 2 of 2014) remain pending before the Special Court, with no final adjudication on title or confiscation as yet.
10. We have heard the arguments of Ld. Counsel for the Applicants as well as Ld. Counsel for the Respondent No.1, 3, 4 as well as the respondent No.11 (ED) and perused the material available on record.
11. At the outset, this Tribunal notes that attachment under PMLA is a provisional measure to prevent dissipation of alleged proceeds of crime and does not, per se, transfer title or ownership until a confiscation order is passed. The reply of Respondent No. 11 explicitly affirms the retention of voting rights and administrative control with the Applicants, which

aligns with the Applicants' position. In the absence of any final order under PMLA divesting the Applicants of their proprietary rights, the attached shares must be considered as part of their holding for the limited purpose of eligibility under Section 244(1)(a). This view finds support in judicial precedents such as *Hind Overseas Private Limited vs. Raghunath Prasad Jhunjhunwalla & Anr.* [(1976) 3 SCC 259], where provisional restraints do not extinguish shareholder rights unless explicitly so provided.

12. Even assuming arguendo that the attached shares were excluded, the Applicants' remaining holding (72,11,439 shares) falls short of the one-tenth threshold (approximately 5,33,50,748 shares). However, the proviso to Section 244(1)(a) vests this Tribunal with discretion to waive the requirement in exceptional cases, guided by the principles of equity and the overarching objective of Sections 241-242 to safeguard against oppressive or prejudicial conduct.

13. Applying the test laid down in *Cyrus Investments* (supra), this Tribunal is satisfied that exceptional circumstances exist warranting waiver. Respondent No. 1, a former SEBI-

recognized commodity exchange de-recognized on 10.05.2022 for regulatory breaches, now operates without oversight, exhibiting persistent financial distress, declining net worth, excessive managerial remuneration in violation of Section 197 read with Schedule V, holding of own shares contrary to Section 67, and sale of assets at undervalued prices prejudicial to stakeholders. With over 2,445 shareholders, including public members, these acts impact the company and its members at large, transcending individual grievances. The Applicants, as erstwhile promoters with substantial stake, have demonstrated prima facie grounds of oppression and mismanagement, corroborated by regulatory history and financial disclosures. The prior litigations (including challenges to the amalgamation scheme and FMC/SEBI proceedings) do not bar the present petition, as they pertain to distinct issues and have not culminated in any final disentitling finding against the Applicants.

- 14.** The reliance by Respondent No. 1 on the discretionary nature of the proviso is misplaced; discretion is to be exercised judiciously, not arbitrarily, and in favor of access to justice

where allegations merit scrutiny. Precedents such as S.P. Jain vs. Kalinga Tubes Ltd. [1965 SCC OnLine SC 15], Needle Industries (India) Ltd. vs. Needle Industries Newey (India) Holding Ltd. [(1981) 3 SCC 333], and V.S. Krishnan & Ors. vs. Westfort Hi-Tech Hospital Ltd. & Ors. [(2008) 3 SCC 363] underscore that waivers are granted to prevent technical bars from defeating substantive claims of corporate malfeasance.

15. Accordingly, the requirement under Section 244(1)(a) of the Companies Act, 2013 is waived to the extent necessary for the Applicants to maintain Company Petition No. 21 of 2024. The accompanying Company Petition shall proceed on merits, subject to notice to all Respondents therein, inviting Reply/objection, if any, within four weeks. Thereafter, Rejoinder to their Reply, if any, within two weeks and compliance with further directions.

16. Accordingly, **IA No. 63 of 2024** stands **disposed of** in the above terms.

17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

C.P. No. 21 of 2024

18. Let notice be issued by the Registry to the Respondent No.1 to 10 returnable by next date. The Applicants are directed to collect the notice from the Registry within three days and serve upon the Respondent No.1 to 10 along with copy of this order, through Registered Ad post / Speed-post, Dasti mode as well as on the registered email ID of the Respondent No.1 to 10 registered with the MCA within seven days.
19. The Respondent No.1 to 10 may file a Reply/objection, if any, within four weeks. Rejoinder to their Reply, if any, be filed within two weeks thereafter.
20. Proof of Service be filed by way of an affidavit before the next date of hearing.
21. List the C.P. No. 21 of 2024 for further consideration on **04.12.2025.**

— SD —

**SANJEEV SHARMA
MEMBER (TECHNICAL)**

— SD —

**SHAMMI KHAN
MEMBER (JUDICIAL)**