(2026) 07 NCLAT CK 0091

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : COMPANY APPEAL (AT) No.236 of 2026 (Arising out of impugned order dated 01.06.2026 passed by Ld. National Company Law Tribunal, Mumbai in Company Petition No. 47 of 2016)

Prakash P Chhabria APPELLANT

Vs

Deepak Kishan Chhabria & Ors RESPONDENT

Date of Decision : 21-07-2026

Acts Referred:

Companies Act — Section 5, 58, 59, 241, 242
Limitation Act — Article 54 of the Schedule

Citation : (2026) 07 NCLAT CK 0091

Hon'ble Judges : Yogesh Khanna, Officiating Chairperson;Ajai Das Mehrotra, Member (Technical)

Bench : Division Bench

Final Decision : Dismissed

Judgement

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

These appeals challenge an impugned order dated 01.06.2026 passed by the Ld. NCLT, Mumbai Bench in Company Application No.*23(MB)/2026* in CP No.47/(MB)/2016 whereby the Ld. NCLT has allowed amendment application filed by Respondent No.1, Mr. Deepak Kishan Chhabria on 22.01.2026 seeking to amend CP No.*47/2016*, a petition pending before Ld. NCLT since 16.11.2016.

2. Before coming to the amendment application it would be appropriate to state few facts. It is the case of the appellant that he and Respondent No.1 are brothers and the fight qua 1,00,300 shares, allegedly gifted by Mr. Prahlad Parasram Chhabria, their father in favour of Mr. Prakash P. Chhabria viz the appellant herein out of love and affection and the indenture of gift is filed on record. It is the submission of the learned senior counsel for the appellant this transfer of 1,00,300 shares of Mr. Prakash P Chhabria was duly approved by the Board of Directors on 31.03.2016 in a Board Meeting wherein Mr. Deepak Kishan

Chhabria, Respondent No.1 was also present. It is submitted though the Company Petition was filed by Respondent No.1 challenging the minutes of the meeting dated 31.03.2016 but he never sought rectification of the register of members and such limitation expired on 31.03.2019.

3. Mr. Prahalad Parasram Chhabria, their father, died on 05.05.2016 and the remaining shares *viz* 16000 approximately are still lying in abeyance. It is argued by the learned senior counsel for the appellant the Company Petition No.*47/2016* was filed on 16.01.2016 and the factum of gift of 1,00,300 shares in favour of the appellant was very much in the knowledge of Respondent No.1 and he did not apply for rectification of register till January, 2026 when an amendment application 23/2026 was filed and amendment was hopelessly barred by time and ought to have been dismissed but rather was allowed while leaving the question of limitation open at the time of the final hearing of the company petition. It is argued after the company petition was filed in 2016 there also was an alteration made in the Articles of Association on 03.05.2019 in an EOGM wherein Article 59 of the Articles of Association of the company was amended. Later yet another EOGM was held on 09.02.2021 wherein Articles 38, 40 and 46 were deleted from the Articles of Association in the EOGM.

4. It is thus argued the limitation to challenge such minutes of meeting of the EOGMs dated 03.05.2019 and 09.02.2021 also expired within three years and it was only in January, 2026 the amendment application was filed, which infact was hopelessly barred by limitation. It is submitted by the learned senior counsel for the appellant limitation is a substantive right accrued to the appellant and if wrong doings are not challenged within period of limitation, the amendments cannot be allowed.

5. In his company petition, Respondent No.1 had asked for declaration to the effect there was never any meeting of the Board of Directors on 31.03.2016 and thus all resolutions, allegedly, passed in the said meeting and in later meetings aforesaid be declared null, void and illegal including resolutions passed in meetings dated 21.06.2016, 24.09.2016 and 28.10.2016.

6. Now if one look at the amendment application, Respondent No.1 has sought rectification of the register of members of company and seeks deleting of the name of the appellant and restoring shares in the position as it existed prior to 31.03.2016; to direct the appellant to return original share certificates; to give effect to Article *31(d)* of the Articles of Association; to declare Article 60 as an Entrenched Article under Section 5 of the Companies Act and to declare the modification of Article 59 and deletion of Article 60 carried out pursuant to EOGM held on 03.05.2019 to be illegal; the deletion of Articles 38, 40 and 46 of the Articles of Association carried in pursuant of EOGM held on 09.02.2021 to be null and void.

7. It is the case of the Respondent No. 1, he rather moved MA No.*1449/2019*to set aside the resolution passed in EOGM dated 03.05.2019 but was not interfered

with by the Ld. NCLT and even in appeal before this Tribunal *vide*order dated 08.02.2021, expeditious disposal of the company petition was only ordered. Further Respondent No. 1 even challenged the holding of the EOGM dated 09.02.2021 by filing an application being IA No.*211/2021* before this Tribunal in Company Appeal (AT) No. *64/2020* but it was disposed of by saying the relief sought in the IA was beyond the scope of the appeal, hence the appellant was directed to approach the Ld. NCLT where the main petition was pending.

8. The matter of M.A. No. 1449/2019 was rather taken to Hon'ble Supreme Court, and the Hon'ble Supreme Court vide order dated 12.01.2026 in Civil Appeal (Diary) No. 54714 of 2024 disposed of the appeal by fixing the time limit for disposing of the company petition and also allowed Respondent no.1 to file an amendment application to be decided by Ld. NCLT in accordance with law. The relevant portion of said judgement of Hon'ble Supreme Court dated 12.01.2026 is as under: -

3. *In such circumstances, we dispose of this appeal with a direction to the National Company Law Tribunal [NCLT] to now proceed with the hearing of the Company Petition No. 47 of 2016 and see to it that the same is disposed of on its own merits within a period of three months from today.*

4. *It is needless to clarify that the Tribunal shall decide the Company Petition referred to above, without being influenced in any manner by any of the observations made by the National Company Law Appellate Tribunal in the impugned order before us.*

5. *At this stage, Mr. Shyam Divan, the learned senior counsel appearing for the appellants, submitted that his clients intend to prefer some interim applications seeking amendment.*

6. *If any such applications are filed, it will be for the NCLT to look into and decide whether to grant such amendment or not in accordance with law.*

9. Though the learned senior counsel for appellant vehemently argued the amendments being beyond limitation ought not have been allowed and in support referred to various authorities *viz* K. Raheja Constructions Ltd and another Vs Alliance Ministries and others, *1995 Supp (3) Supreme court Cases 17* wherein the Hon'ble Supreme Court held the petitioners ought to have asked for relief on specific performance in the original suit and having allowed the period of *7* years elapsed from the date of filing the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondents.

10. Further he also referred to Vishwambhar and others Vs Laxminarayan (Dead) through Lrs and another (2001) 6 Supreme Court Cases 163 wherein the Hon'ble Supreme Court held: -

9.xxxx The judgment of the trial court dismissing the suit was not challenged by *him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digambar the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds.*

10.xxxx As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed and not earlier than that.

11. Further in South Konkan Distilleries and another Vs Prabhakar Gajanan Naik and others (2008) 14 Supreme Court Cases 632 the Hon'ble Supreme Court held as under:

24. *Having heard the learned counsel for the parties and considering the nature of amendment and the length of time after which the prayer for amendment was made by the appellants in the written statement and the counter claim, we are of the view that the High Court as well as the trial court had exercised their jurisdiction in a proper manner in rejecting the application for amendment of the written statement and the counter claim.*

12. We have gone through the judgements. It is also the submission of the learned senior counsel for the appellant despite the Ld. NCLT noting in its impugned order *a)* there exists a considerable delay of nearly 10 years in filing the amendment application; *b)* the issue of limitation involves a mixed question of fact and law, had allowed amendments to be taken on record.

13. However, we find though the Ld. NCLT has allowed the amendment to be brought on record but has simultaneously kept the issue of limitation open. The impugned order rather reveals the Ld. NCLT has not gone into merits of the amendments and all questions as to whether the amendments have been made within limitation or not is left open to be raised as separate issue to be decided when the main Company Petition is heard.

14. We find no illegality in the impugned order in view of the averments made in the Company Petition as also the prayer made in it, especially in view of the submissions of the Respondent that both the minutes of the meeting of the EOGM dated 03.05.2019 and 09.02.2021 were since challenged by them in due course and they were only the subsequent events which occurred during the pendency of the Company Petition and were required to be brought on record and admittedly the question of limitation is kept wide open by the Ld. NCLT. Further we note if the prayers made in the main petition are to be allowed and

the meeting of the Board of Directors held on 31.03.2016 is allegedly declared illegal, then consequently all the resolutions passed later would rather become null and void, hence we see no illegality in allowing the application with a caveat of challenge to limitation. Such a course of action has been allowed even by the Hon'ble Supreme Court in Jer Rutton Kavasmaneek and Ors Vs Gharda Chemicals Ltd & Ors *2000(3) Mh.L.J.* wherein the Hon'ble High Court held: -

> *"At this stage the Court is not required to decide the petition on merits. The petition could be held to be demurrable only if the claim put forward cannot be established even if all the allegations made in the petition are accepted to be true. Such is not the position here. It is only at the final hearing of the petition that the court would be able to decide the issues as to whether the dividend squeeze could amount to an oppression.*

15. Further in Ragu Thilak D John Vs S. Rayappan *(2001) 2 SCC 472* the Hon'ble Supreme Court held: -

> *"a. The dominant purpose of allowing an amendment is to minimize multiplicity of litigation and enable the Court to determine the real controversy between the parties.*
>
> *b. Where the plea of limitation is itself disputed on arguable, it is not a ground to refuse the amendment at the threshold. The amendment should ordinarily be allowed, and the issue of limitation should be left open to be decided at the final hearing after the necessary issues are framed.*
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> *c. The Court held that amendments incorporating subsequent events and consequential reliefs ought not to be rejected merely because the opposite party raises a plea of limitation. Such plea is to be adjudicated on merits at the trial and not at the stage of considering the amendment application.*

16. Moreso in MC Davar Holdings Pvt Ltd Vs Aurosagar Estates Pvt Ltd *2017 SCC Online SC 2139* the Hon'ble Supreme Court held as under: -

a. xxxx

b. The Court held that the amendment did not introduce a new cause of action but merely cited additional instances of the alleged oppression already pleaded in the main petition.

All question regarding whether the amendment is barred by limitation are to be left open and decided on the facts of the case when the main company petition is heard, not at the amendment stage.

17. Now the law, even otherwise, is well settled if subsequent developments and proceedings have arisen during the pendency of the matter, necessitating the consequential pleadings, the amendments can be brought on record. If the necessary factual foundation in the amended claim was already present in the plaint and the amendments merely add an alternative legal basis for relief, it may be allowed. Further it is also settled preposition the amendment *generally be disallowed only if it changes the nature of the suit, is mala fide or divest the other side of valid defence or accruing right* and that delay always is not a ground for refusal for the prayer for amendment. The only question to be considered is if the proposed amendment is necessary for the decision on *real*

controversy between the parties.

18. The Counsel for the Appellant conceded that *(i)* he had no objection to the Amendment relating to subsequent events like the two Resolutions and EOGMs amending and deleting certain Articles of Association; and *(ii)* his only objection was that no prayer for Rectification of Register under Sections 58 and 59 could be added now as the entry in the Register took place in 2016 before the filing of the Company Petition and therefore barred by limitation.

19. The Respondents submit the Company Petition itself at page 164 and page 213 (para 93) expressly invokes Sections *58* and *59* for Rectification of the Register by pleading that the shares were illegally transferred. Mere omission at that time to add a formal prayer for Rectification is not fatal. The Appellant was put to notice. The transfer was the substratum of the challenge. Rectification of the Register is only a consequential relief. That has been added now by way of abundant caution.

20. The Reasoning of the Hon'ble NCLT is from paras 4.3 to 4.29 at pages 112 to 122. It is a speaking order. No ground for interference has been made out. Similar view has been taken in Wander Ltd v. Antox India (P) Ltd., 1990 Supp SCC 727 [para 14], reproduced below:

"14. *The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)*

> *"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] ….the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case. "*
>
> *The appellate judgment does not seem to defer to this principle."*

21. Considering the pleadings made in the CP *viz* more specifically para 93 wherein Respondent No.1 has sought relief and directions under Section *241* read with Section *242* and Section *58* and *59* of the Companies Act before the Ld. NCLT, and thus considering the subsequent developments, we see no reason to say that the placing of amendments on record would be illegal exercise of power especially when the issue of limitation is kept open and there being precedents for such course of action *per* Jer Rutton Kavasmaneek (supra) and Ragu Thilak D John (supra).

22. Thus, the appeal being devoid of merit is dismissed. The Ld. NCLT may decide on objections relating to limitation and the merits of amended pleadings uninfluenced by any of our observations at appropriate stage while finally deciding the company petition. Rights and contentions of the parties are kept open. Pending applications, if any, are also closed.