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## **Supreme Court of India clarifies that formal entry in register of members not prerequisite for maintaining oppression and mismanagement proceedings**

In the recent case of *Dr. Bais Surgical and Medical Institute Private Limited and Ors. vs. Dhananjay Pande*<sup>1</sup>, the Hon'ble Supreme Court of India ("**Supreme Court**") ruled that formal entry in a company's register of members is not an absolute prerequisite for seeking relief in respect of oppression and mismanagement under Sections 397<sup>2</sup> and 398<sup>3</sup> of the Companies Act, 1956 ("**1956 Act**") (that are *in pari materia* with Sections 241 and 242 of the Companies Act, 2013 ("**CA 2013**")).

The decision of the Supreme Court departs from the established legal principle that ordinarily, entry of a person's name in the register of members confers and evidences the status of membership in a company. While the question had been earlier dealt with by various High Courts, the judgment of the Supreme Court conclusively settles this legal question.

The decision of the Supreme Court answers a pivotal question of maintainability of oppression and mismanagement petitions, in which the issues of who qualifies as a member and whether they are entitled to initiate such petitions frequently arise as threshold questions.

### **Brief facts**

Appellant No. 1 was incorporated in 1994 to operate a hospital. Appellant No. 2, along with his wife, established and constructed a hospital intended to be operated by Appellant No. 1. Shortly after commencing operations, the hospital faced severe financial constraints. Dhananjay Pande ("**Respondent No. 1**") approached the Appellants with a proposal to infuse funds into the Appellant No. 1. This was done on the condition that Respondent No. 1 be appointed as managing director in the Appellant No. 1 company, and that the hospital be converted into a specialised cardiac facility. Subsequently, Respondent No. 1 was appointed managing director, and his investment led to increased authorised share capital and profits.

Respondent No. 1 alleged that in July 1999, the Board of Directors ("**Board**") allotted him 14,75,998 (fourteen lakh seventy-five thousand nine hundred and ninety-eight) shares ("**Disputed Shares**") against the application money he had paid to the Appellant No. 1. However, the Appellants disputed this allotment. Disputes eventually led the Board to

<sup>1</sup> Civil Appeal No. 8973 of 2010; 2026 SCC OnLine SC 794 (decided on May 4, 2026)

<sup>2</sup> Section 397 of the 1956 Act provides for remedy in cases where the affairs of a company are being conducted in a manner prejudicial to public interest, or in a manner oppressive to any member(s).

<sup>3</sup> Section 398 of the 1956 Act provides for remedy in cases where the affairs of a company are being conducted in a manner prejudicial to public interest, or in a manner prejudicial to the interests of the company.

suspend Respondent No. 1. Subsequent conciliation proceedings in May 2000 led to the withdrawal of Respondent No. 1's suspension, who, in turn, withdrew from the day-to-day affairs of Appellant No. 1.

In January 2001, Respondent No. 1 filed a petition against the Appellants under Sections 397 and 398 of the 1956 Act ("**First Petition**") alleging oppression and mismanagement, primarily because the Appellants failed to issue share certificates despite receiving the share application money. The Appellants challenged his *locus standi* to maintain a petition under Sections 397 and 398 of the 1956 Act, arguing he was not a 'member' because his name was not recorded in the register of members.

In 2004, the First Petition was allowed by the Company Law Board, holding that Respondent No. 1 was a member of Appellant No. 1. The Appellants preferred an appeal against this decision, which was dismissed by the High Court despite the Appellants' preliminary objection regarding maintainability.

Later, a second tranche of proceedings arose when Appellant No. 1 allotted the Disputed Shares to Respondent No. 1 while simultaneously allotting 60,00,000 (sixty lakh) additional shares to Appellant No. 2. This allotment to Appellant No. 2 was challenged by Respondent No. 1 by way of another petition under Sections 397 and 398 of the 1956 Act ("**Second Petition**"), alleging that this was a move to dilute his shareholding from 49% to 15%.

The Company Law Board held that the allotment of shares to Appellant No. 2 was oppressive and had been effected to deprive Respondent No. 1 of the benefit of the order in the First Petition directing allotment of shares in his favour. The appeal filed by the Appellants against this decision was also dismissed by the High Court.

The Appellants thereafter filed Special Leave Petitions against the High Court's orders by which their appeals against the final orders of the Company Law Board orders in the First Petition and the Second Petition were dismissed.

## Issue

The sole issue considered by the Supreme Court was whether Respondent No. 1 could be regarded as a 'member' of the Appellant No. 1 company, so as to maintain a petition under Sections 397 and 398 of the 1956 Act, despite the absence of a formal entry of his name in the register of members.

## Findings and analysis

The Supreme Court upheld the decisions of the High Court and the Company Law Board, holding that a person can become a shareholder of a company either by his name being entered in the register of members or by him being treated as a member, as evidenced by subsequent conduct.

The Supreme Court clarified that the word 'member' in the context of oppression and mismanagement provisions has to be understood in light of the broad definition provided in Section 2(27)<sup>4</sup> of the 1956 Act, which embraces every category of member, with the sole exclusion of bearer of a share-warrant, and not with reference to Section 41 of the 1956 Act, which provides, *inter alia*, that a person "*who agrees in writing to become a member of a company and whose name is entered in its register of members*" will be a member of the company. It was clarified that the purpose of the restrictive definition under Section 41 is to protect the interests of a company from a subsequent purchaser of shares and to protect shareholders from false claims. However, in all other cases, the broader definition provided in Section 2(27) applies.

The Supreme Court emphasised that the nature of jurisdiction under Sections 397 and 398 is equitable in character, intended for the protection of minority shareholders, and this equitable foundation must be a guiding factor to construe the term 'member' broadly, and not in an unduly restrictive or technical manner that would frustrate the object and purpose of protecting minority shareholders.

The Supreme Court cited and affirmed decisions of various High Courts which had earlier held that Sections 397 and 398 of the 1956 Act cannot be rigidly controlled by procedural requirements and that the absence of a formal entry in

<sup>4</sup> Section 2(27) of the 1956 Act provides an inexhaustive definition of a 'member' of a company.

the register of members would not preclude jurisdiction under Sections 397 and 398 of the 1956 Act<sup>5</sup>. The Supreme Court also relied upon its earlier decision in *M/s World Wide Agencies Private Limited and Anr. vs. Margarat T. Desor and Ors.*<sup>6</sup>, wherein it was held that the legal representatives of a deceased shareholder, whose names had not yet been entered in the register of members, were entitled to maintain a petition under Sections 397 and 398 of the 1956 Act.

Having clarified the law, the Supreme Court noted various factual circumstances that demonstrated Respondent No. 1's title/ proprietary interest, including, *inter alia*, correspondence acknowledging Respondent No. 1's entitlement to a substantial shareholding, change in the hospital's name to that of Respondent No. 1's trading concern, and Appellant No. 1 company's financial and operational conduct, which showed that Respondent No. 1's investment was accepted and utilised for expanding the company's business. Therefore, the Supreme Court upheld the decision of the High Court, holding that it was "*founded upon a consistent and cumulative chain of factual circumstances demonstrating recognition of [Respondent No. 1's] proprietary interest in the appellant company*".

## Conclusion

The judgment of the Supreme Court is a significant clarification of a threshold question for maintaining oppression and mismanagement proceedings. In earlier decisions, the Supreme Court has held that the privileges of a 'member' can be exercised by only that person whose name is entered in the register of members,<sup>7</sup> that persons whose names are not so entered cannot claim to be shareholders,<sup>8</sup> and that such persons cannot even file winding-up petitions.<sup>9</sup> However, with the judgment, the Supreme Court has clarified that the absence of a formal entry in the register of members is not, by itself, fatal where the company's conduct, records and surrounding circumstances demonstrate that the person was treated as a member or was entitled to be recognised as one. In doing so, the Supreme Court has given effect to the equitable and remedial purpose of Sections 397 and 398 of the 1956 Act (and the corresponding framework under Section 241 of the CA 2013) by preventing technical objections from defeating substantive minority protection.

At the same time, the judgment does not dilute the importance of statutory compliance or convert busybodies into members. The inquiry remains fact-specific and must be supported by cogent evidence of recognition of membership rights, such as allotment-related conduct, participation in management, use of share application money, or other contemporaneous records. The ordinary rule that entry in the register of members confers and evidences membership may be diluted only where a person is able to demonstrate title to membership, i.e., a proprietary interest in the shares of the company, through other means.

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<sup>5</sup> *Shri Balaji Textile Mills Private Limited and Anr. vs. Ashok Kavle and Ors.*, 1988 SCC OnLine Kar 80; *Shri Gulabrai Kalidas Naik and Ors. vs. Shri Laxmidas Lallubhai Patel of Baroda and Ors.*, 1977 SCC OnLine Guj 47; *S.V.T. Spinning Mills Private Limited and Ors. vs. M. Palanisami and Ors.*, 2009 SCC OnLine Mad 3260; *Umesh Kumar Baveja and Ors. vs. IL and FS Transportation Network Limited and Ors.*, 2013 SCC OnLine Del 6436

<sup>6</sup> (1990) 1 SCC 536

<sup>7</sup> *Balkrishan Gupta vs. Swadeshi Polytex Limited*, (1985) 2 SCC 167

<sup>8</sup> *Nanalal Zaver vs. Bombay Life Assurance Co. Limited*, 1950 SCC 137

<sup>9</sup> *Severn Trent Water Purification Inc. vs. Chloro Controls (India) Private Limited*, (2008) 4 SCC 380

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