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# Beyond the Register of Members: Re-defining “Membership” in Oppression and Mismanagement Proceedings under Company Law

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## 1. Introduction

Corporate disputes relating to oppression and mismanagement often unfold in spaces where legal formalities and commercial realities do not perfectly align. While company law traditionally places considerable emphasis on statutory records, modern corporate functioning frequently witnesses investments, managerial participation, beneficial arrangements, and proprietary interests evolving in forms that may not immediately find reflection in the register of members. It is precisely this tension between formal legal recognition and substantive equitable entitlement that lies at the heart of the decision of the Hon’ble Supreme Court in ***Dr. Bais Surgical And Medical Institute Pvt. Ltd. v. Dhananjay Pande*** [2026] 186 taxmann.com 175 (SC).

The judgment marks another important milestone in the evolving jurisprudence surrounding oppression and mismanagement under Indian company law. The Court revisited the recurring yet deeply contested question — whether a person whose name does not stand reflected in the register of members can nevertheless invoke the protective remedies available under the Companies Act on the basis of beneficial ownership, equitable interest, or consistent corporate recognition. In answering this issue, the Supreme Court examined the interplay between the statutory conception of membership under the Companies Act, 1956 and the equitable foundations upon which remedies under Sections 397 and 398 are structured. The decision is significant not merely for its interpretation of the term “member”, but for reaffirming that corporate justice cannot always be confined within rigid procedural boundaries where substantive proprietary rights and equitable considerations clearly emerge from the factual matrix.

## 2. Factual Background

Appellant No. 2, along with his wife, established and constructed a hospital operated by appellant No. 1 Company. The hospital commenced operations but soon encountered financial constraints. At that stage, Respondent No. 1 approached the appellants with a proposal to infuse funds into the company. Acting upon this arrangement, Respondent was appointed as Managing Director for a period of five years and the hospital was subsequently converted into a heart institute.

Disputes subsequently arose between the parties and the Respondent instituted the first company petition under Sections 397 and 398 of the Companies Act, 1956 alleging oppression and mismanagement. The primary grievance raised was the failure of the company to issue share certificates despite having received substantial share application money. At the threshold itself, the appellants questioned the maintainability of the petition under Section 399 on the ground that respondent No. 1 was not a “member” within the meaning of the Act.

## 3. Decision of the Company Law Board

The Company Law Board proceeded on the basis that Respondent was a member of the company and allowed the petition. The appellant company was directed either to allot shares corresponding to the investment made by Respondent or, alternatively, refund the amount invested together with interest. The challenge preferred by the appellants before the High Court came to be dismissed.

Subsequently, in December 2004, the appellant No. 2 was also allotted 60,00,000 shares in consideration of transfer of the land and building in which the hospital was functioning, such transfer being a prerequisite for execution of a Management Agreement with Wockhardt Hospitals Ltd. This allotment was challenged by Respondent through a second company petition under Sections 397 and 398 of the Companies Act, 1956 as contrary to his interests as well as those of the company.

The Board thereafter held that the allotment of shares in favour of appellant No. 2 was oppressive in nature and intended to deprive Respondent of the benefit flowing from the earlier order. Accordingly, directions were issued requiring the appellants or Wockhardt Hospitals Ltd. to purchase the shares allotted to Respondent together with interest.

The second order of the Company Law Board was also challenged before the High Court, which again dismissed the appeal.

**4. Question before the Supreme Court**

The principal question before the Supreme Court was whether, in the absence of formal entry of Respondent No. 1's name in the register of members, he could nonetheless be regarded as a "member" of the company for the purposes of invoking the jurisdiction under Sections 397 and 398 of the Companies Act, 1956.

**5. Submissions of the Appellants**

The appellants contended that Respondent was never a member within the meaning of Section 41 of the Companies Act, 1956. According to the appellants, it is a settled principle that unless a person's name is entered in the register of members, such person cannot be treated as a member nor can he enforce rights available exclusively to members under the Act.

It was argued that existence of membership constitutes a jurisdictional fact for maintaining proceedings under Sections 397 and 398. Unless this jurisdictional requirement was satisfied, the Company Law Board could not have assumed jurisdiction to entertain the petition.

The appellants further argued that Respondent himself had earlier instituted civil proceedings for recovery of the invested amount, thereby treating the investment as a recoverable debt and not as share capital. Having sought recovery of the amount, he could not subsequently assert rights arising out of alleged membership.

It was also contended that any conduct on the part of the company or any recognition extended to Respondent could not override the express statutory requirements governing membership under the Companies Act.

**6. Submissions of the Respondent**

Respondent supported the reasoning adopted by the Company Law Board and affirmed by the High Court. It was argued that the obligation to enter the name of a person in the register of members was a statutory obligation of the company itself, and the company could not be permitted to take advantage of its own omission by adopting a hyper-technical interpretation of the expression "member".

Respondent emphasised that substantial investments had been made by him, which were accepted and utilised by the company in its business operations. In these circumstances, the company could not deny his entitlement to membership merely because it had failed to complete the ministerial act of entering his name in the register of members.

**7. Discussion and Findings of the Supreme Court**

**7.1 Findings of the High Court**

The High Court dismissed the appeal on the ground that the cumulative facts and surrounding circumstances clearly demonstrated that Respondent was entitled to be treated as a member of the company.

The High Court held that the expression "member" occurring in Sections 397 and 398 must be understood in the light of the inclusive definition under Section 2(27) rather than by adopting a narrow construction based solely on Section 41. It observed that Section 41 was introduced to protect companies and shareholders from fraudulent claims and was not intended to operate as the exclusive mode for recognising membership in every factual situation.

The High Court further held that a person may become a shareholder not only through formal entry in the register of members but also through consistent treatment and recognition as a member by the company itself. On the basis of the factual matrix, the High Court concluded that although documentary evidence was not entirely complete, the preponderance of probabilities clearly supported allotment of shares in favour of Respondent.

**7.2 Statutory Interpretation of "Member"**

The Supreme Court observed that resolution of the controversy required examination of the statutory scheme governing membership under the Companies Act, particularly the interplay between the inclusive definition under Section 2(27) and the provisions governing acquisition of membership under Section 41.

The Court noted that Section 2(27) adopts a definition of wide amplitude whereas Section 41 merely prescribes recognised modes through which membership may arise. Importantly, the Court observed that the requirement of a written agreement introduced by the 1960 amendment was intended to ensure reliable proof of consent and prevent fraudulent inclusion of names in the register. It was not intended to make formal entry in the register the sole or exclusive basis for acquiring membership.

**7.3 Equitable Nature of Jurisdiction under Sections 397 and 398**

A more fundamental consideration, according to the Supreme Court, arose from the nature of jurisdiction conferred under Sections 397 and 398, which has consistently been recognised as equitable in character.

The Court observed that these provisions are intended to protect minority shareholders against oppressive conduct and mismanagement. The maintainability requirement under Section 399 therefore had to be examined in the context of the equitable purpose underlying the statutory scheme rather than through a purely mechanical application of Section 41(2).

The Supreme Court emphasised that the equitable foundation of Sections 397 and 398 requires that the expression "member" should not be construed in an unduly restrictive or technical manner so as to defeat the remedial purpose of the legislation.

**7.4 Recognition of Membership beyond Formal Entry**

The Court held that a conjoint reading of Sections 397, 398 and 399 indicates that the expression "member" cannot be confined solely to the technical formulation contained in Section 41(2). Rather, the broader definition under Section 2(27) assumes relevance in determining whether a person is entitled to invoke the remedies contemplated under the Act.

Ultimately, the Court held that the conclusion treating Respondent as a member was founded upon a consistent and cumulative chain of factual circumstances demonstrating recognition of his proprietary interest in the company. Accordingly, the Supreme Court found no reason to interfere with the concurrent findings recorded by the High Court and the Company Law Board.

**8. Analysis**

The judgment is significant because it carefully balances two competing principles of company law. On one hand lies the traditional insistence upon statutory certainty through maintenance of the register of members. On the other lies the equitable necessity of preventing companies from defeating substantive proprietary claims by relying upon their own procedural omissions.

Importantly, the Supreme Court has not diluted the statutory framework governing membership. Rather, the Court has recognised that in exceptional factual situations, where the conduct of the company itself consistently acknowledges proprietary participation and shareholding interest, rigid insistence on formal entry in the register may defeat the very purpose of oppression and mismanagement remedies.

The decision also reinforces the long-standing principle that proceedings under Sections 397 and 398 are fundamentally equitable in nature. Such jurisdiction is not intended merely to adjudicate technical rights but to ensure fairness in corporate governance and protect legitimate stakeholder interests from oppressive conduct.

**9. Conclusion**

The decision in ***Dr. Bais(supra)*** represents an important reaffirmation of the equitable foundations underlying oppression and mismanagement jurisprudence in India. The Supreme Court has clarified that while statutory discipline remains central to company law, procedural technicalities cannot be permitted to defeat substantive proprietary rights where the factual record overwhelmingly demonstrates recognition of membership-like status by the company itself.

In many closely held companies and family-controlled corporate structures, investments and management arrangements often evolve informally before statutory compliances are fully completed. The judgment recognises this commercial reality while simultaneously preserving the broader statutory framework governing membership. By harmonising Sections 2(27), 41, 397, 398 and 399 of the Companies Act, 1956, the Supreme Court has ensured that equitable corporate remedies remain meaningful and capable of addressing genuine cases of oppression, even where formal corporate records may not perfectly reflect the underlying realities.