

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 17.08.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP No. 104/BB/2020	For pronouncement of orders on IA 267/2020 IA 268/2020	Sec 241-242 of CA 2013	Dr. Jaya Subramanyam Goparaju	Manu K Pragati Law Chambers	Live 100 Hospital and Others	

ADVOCATE FOR PETITIONER/s:

Mr. Vivekananda for R-3
V. Srinivas Raghavan, Senior Counsel
& Mr. Abijit Atul. for R1 & 2.

ADVOCATE FOR RESPONDENT/s:

ORDER

I.A No. 267 of 2020 and I.A. No. 268 of 2020 in CP No. 104/BB/2020 is disposed of by separate order. Admit. Issue Notice.

Registry is directed to issue notice to the Respondents through email and the Petitioner is also permitted to take notice to the Respondents, through authorized email along with Company Petition and material papers and submit the proof of service before the next date of hearing. Post the case for final hearing on 09.10.2020


MEMBER (T)


MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.267/2020 in
C.P.No.104/BB/2020
U/s. 244 (1) of the Companies Act, 2013

Between:

Dr. Jaya Subramanyam Goparaju
W/o. Mr. Goparaju Venkata Subramanyam
R/a. D-1301, Mantri Elegance,
Bannerghatta Road,
Bengaluru – 560 076 - Applicant/Petitioner

And

Live 100 Hospital Private Limited
Represented by its Managing Director
Dr. H.N. Nagaraj
R/o. at 104/1, Hosur Road,
Singasandra,
Bengaluru – 560 068 & 6 Ors. - Respondents

Date of Order: 17th August, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present, through Video Conference:

For the Applicant : Shri Manu. K
For the Respondent Nos.1 & 2 : Shri V.S.Raghavan, Sr. Counsel
With Shri Abhijit Atur
For the Respondent No.3 : Shri S. Vivekananda

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.267/2020 in C.P.No.104/BB/2020 is filed by Dr. Jaya


Page 1 of 7

Subramanyam Goparaju ('Applicant/Petitioner'), U/s. 244 (1) of the Companies Act, 2013, against Live 100 Hospital Private Limited & 6 Ors. (Respondents), by inter alia seeking the Tribunal to exercise its powers vested on it, under Proviso to Section 244 (1) of the Companies Act, 2013, and waive the stipulation U/s. 244 (1) (a) of the Companies Act, 2013, which required the Applicant to hold 1/10th of the "Issued Share Capital" in the 1st Respondent Company, and consequently permit the Applicant to maintain the company Petition filed U/s.241 & 242 of the Companies Act, 2013, in the interest of justice and equity.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

- (1) The main Company Petition bearing C.P.No.104/BB/2020 was filed by Dr. Jaya Subramanyam Goparaju, U/s. 241 & 242 of the Companies Act, 2013, by inter alia seeking to cancel the Special Resolution dated 06.07.2020 passed in Extraordinary General Meeting held on 06.07.2019 authorising the 1st Respondent Hospital to alienate the immovable properties owned by it; and to direct the R-2 to deposit in the Bank account of the R-1 Hospital, a sum of Rs.21,61,81,799/- or such additional sums of money along with interest @ 24% p.a. which have been illegally misappropriated/siphoned off/diverted from the R-1 Hospital, by the 2nd and 4th Respondents for their personal use during their respective tenure as Directors.
- (2) The Applicant is a Senior Obstetrician & Gynecologist ("**OBG**") and Infertility Specialist and has over 20 years of experience as an OBG specialist. She has completed her MBBS from Kurnool Medical College, Kurnool, Andhra Pradesh, one of the oldest and premier medical colleges in India and her Post Graduation St.

Martha's Hospital, Bangalore, one of the oldest Hospitals in India. Further, she has also completed her Infertility Fellowship from Indian Medical Association.

- (3) Live 100 Hospital Private Limited (Respondent No.1) is a Private Limited Hospital was incorporated on 09.04.2007, under the provisions of the Companies Act, 1956. It is a private unlisted Company and is classified as 'Company Limited by Shares'. It is a Multi Speciality Hospital having its registered office at 104/1, Hosur Road, Singasandra, Bangalore -560 068, having authorized share capital of Rs.16,00,00,000/- and the Paid-up share Capital of the Company is 15,75,00,000/-. The current shareholding pattern 1st Respondent Hospital is as follows :-

Sl. No.	Shareholder	No. of Equity Shares	% of Equity Holding
a.	Promoters		
1.	Respondent No. 2	1,34,97,500	85.7
b.	Other Than Promoters		
1.	Applicant/ Petitioner	15,00,000	9.52
2.	Respondent No. 5 (wife of Respondent No. 2)	2,500	0.016
3.	Respondent No. 3	7,50,000	4.76
	TOTAL	1,57,50,000	100

The Equity Shares were issued at a premium (*double the face value*) to the Applicant and the Applicant paid a consideration of Rs.3,00,00,000/- for shares whose face value amounted to only Rs.1,50,00,000/-. Also invested another 1.8 crores into the Respondent No.1 Hospital, which is being shown as an unsecured loan as against the name of the Applicant, in the Financial Statements of the Hospital. The total investment made by the Applicant in the Respondent No.1 Hospital



amounted to Rs.4.8 Crores against which only Rs.15,00,000/- of face value Rs.10 was issued to the Applicant.

- (4) The main Petition is filed by alleging the following acts of Oppression and Mismanagement being committed by the Respondents, under Section 241 of the Companies Act –
- (i) Equity shares being allotted to the Applicant at price double than the face value was done with an objective to extract monies from the Applicant.
 - (ii) Siphoning off of the monies from the Hospital's account to personal accounts was being done to dry up all the funds of the Hospital including the funds invested by the Applicant in a manner that nothing is left for the Applicant to recover its investments made in the Hospital.
 - (iii) Entering into Related Party Transactions demonstrates that the Respondent No. 1 Hospital was incorporated only to extract money from the Applicant and to illegally run the director's competing businesses.
 - (iv) Collusion and entering into a Settlement Agreement with Respondent No.3 in order to bury the police investigation and conceal the financial fraud being committed on the hospital.
 - (v) Alienation of the immovable assets of the hospital at a rebate, in the guise of repaying debts which is a fraction of the market value of the immovable property, and thereby virtually rendering the hospital Bankrupt.
 - (vi) Deliberate non-filing of the Annual returns and financial statements of the company for the last three years with an intention to systematically conceal all information of financial fraud from the Applicant and to keep the Applicant in the dark with regard to the affairs of the hospital.

- (vii) Although the Respondent No.2 is disqualified from being a director on account of deliberate failure to file Financial Statement and /or Annual Returns for a continuous period of 3 years, he continues to exercise the powers of a Director of the 1st Respondent and is now attempting to render the 1st Respondent Bankrupt.
- (viii) Appointment of Respondent No. 4 by Respondent No.2 was done with the objective to gain complete authority over the affairs of the company and to run it like a family property.
- (5) In a Petition filed by the Respondent No.3 U/s. 7 of Code vide C.P. (IB) No. 107/BB/2017, a forensic audit was conducted into the affairs of the Hospital and it was discovered that large scale siphoning and misuse of the Respondent No.1 Hospital funds were being committed by Respondent No.2, but however, due to the collusion between the Respondent Nos.2 & 3 and subsequent withdrawal of the Petition, no further steps were taken to reach to the truth of the matter, which resulted in unfairly prejudicing the Applicant as a shareholder of the Respondent No.1 Hospital.
- (6) It is stated that the Applicant had agreed to invest Rs. 5 crores in the Respondent No.1 Hospital based on the terms and conditions of the Memorandum of Understanding dated 19/10/2011 ("**MoU**") entered into by the Applicant with the Respondent No.1 Hospital represented by Respondent No.2. The Term and Conditions of the MoU states as follows –
- "General Terms of understanding for the Equity participation:*
- a. *The second party will invest Rs. 5,00,00,000/- (Rupees Five Crores only) to acquire 10% of the share of LHH.*
- b. *The number of shares shall be calculated to maintain the relative percentage of shareholding of the second party at 10% after taking into account the investment by the next investor*



who may invest up to 5% or 10%. That is, the shareholding of the second party should not get diluted below 10% even after the next investor comes on board.

- c. The number of shares shall be calculated to maintain the relative percentage of shareholding of the second party at 10% after taking into account the next rounds of increase in Authorized Capital before new Investors come on board.”*

Therefore, the Applicant was entitled to 10% of the total equity stake of the Company at all times and in case of any fresh investment the number of shares shall be calculated in a manner as to not dilute 10% shareholding of the Applicant.

- (7) The total number of shareholders of the Respondent No.1 Hospital are only 4 in number out of which almost 86% of the Equity Stake is held by one single shareholder, Respondent No.2 and his wife Respondent No.5. Further, Respondent No.3 who itself is colluding with Respondent No.1 for its own personal gains holds 4.76% of the equity stake in the Respondent No.1 Hospital. Therefore, in effect, the Applicant is the only existing minority shareholder of the Respondent No.1 and the only shareholder who is being oppressed by the acts of the Respondents. The affairs of the Company remains only in the hands of Respondent No.2 who is the majority shareholder and is miss-utilizing his position to make unilateral decisions for his own personal gain and prejudicial to the Applicant's interest. Therefore, the Applicant is the only shareholder that can bring about a case of Oppression and Mismanagement against the Respondents for the blatant frauds, misappropriation and siphoning off funds that are being committed by the Respondents in collusion with each other.
3. Heard Shri Manu.K, learned Counsel for the Applicant/Petitioner and

and Shri V. S. Raghavan, learned Senior Counsel for the Respondent Nos.1&2 and Shri S. Vivekananda, learned Counsel for the Respondent No.3. We have carefully perused the pleadings of the Parties and extant provisions of the Companies Act, 2013 and Rules made thereunder.

4. As detailed supra, the Applicant/Petitioner admittedly is substantially lone minority Member/Shareholder of the Respondent No.1 Hospital, by holding 15,00,000/- Equity Shares, constituting of 9.52% of the total Equity stake in the Hospital. The total number of shareholders of the Respondent No.1 Hospital was only 4 in number, out of which almost 86% of the Equity Stake was held by one single shareholder, Respondent No.2 and his wife Respondent No.5. The Applicant/Petitioner has made several acts of oppression and mismanagement in the main Company Petition. And those allegation have prima facie evidence so as to warrant examination of those allegations at the time final hearing of the case, after getting Replies from the Respondents. It is a settled position of law that a meritorious litigation cannot be thrown at thresh hold. Therefore, the Petitioner is entitled to maintain the Company Petition. Hence, we are inclined to waive the requisite conditions as prayed for.
5. In the result, I.A.No.267/2020 in C.P.No.104/BB/2020 is hereby allowed as prayed for, by waiving the stipulation Under Section 244 (1) (a) of the Companies Act, 2013. Accordingly, the Company Petition is admitted by directing the Respondents to file their Replies.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.268/2020 in
C.P.No.104/BB/2020
U/s. 213 of the Companies Act, 2013

Between:

Dr. Jaya Subramanyam Goparaju
W/o. Mr. Goparaju Venkata Subramanyam
R/a. D-1301, Mantri Elegance,
Bannerghatta Road,
Bengaluru – 560 076 - Applicant/Petitioner

And

Live 100 Hospital Private Limited
Represented by its Managing Director
Dr. H.N. Nagaraj
R/o. at 104/1, Hosur Road,
Singasandra,
Bengaluru – 560 068 & 6 Ors. - Respondents

Date of Order: 17th August, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala; Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present, through Video Conference:

For the Applicant : Shri Manu. K
For the Respondent Nos.1 & 2 : Shri V.S.Raghavan, Sr. Counsel
With Shri Abhijit Atur
For the Respondent No.3 : Shri S. Vivekananda

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.268/2020 in C.P.No.104/BB/2020 is filed by Dr. Jaya


Page 1 of 6

Subramanyam Goparaju ('Applicant/Petitioner'), U/s.213 of the Companies Act, 2013, against Live 100 Hospital Private Limited & 6 Ors. (Respondents), by inter alia seeking the Tribunal to exercise its powers vested on it under Proviso to Section 213 of the Companies Act, 2013, to order investigation be conducted into the affairs of the R-1 Hospital, in the interest of justice and equity.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

- (1) The main Company Petition bearing C.P.No.104/BB/2020 was filed by Dr. Jaya Subramanyam Goparaju, U/s. 241 & 242 of the Companies Act, 2013, by inter alia seeking to direct cancellation of the Special Resolution dated 06.07.2020 passed in Extraordinary General Meeting held on 06.07.2019 authorising the 1st Respondent Hospital to alienate the immovable properties owned by the it; and to direct the R-2 to deposit in the Bank account of the R-1 Hospital a sum of Rs.21,61,81,799/- or such additional sums of money along with interest @ 24% p.a. which have been illegally misappropriated/siphoned off/diverted from the R-1 Hospital, by the 2nd and 4th Respondents for their personal use during their respective tenure as Directors.
- (2) The Applicant is a Senior Obstetrician & Gynecologist ("**OBG**") and Infertility Specialist and has over 20 years of experience as an OBG specialist. She has completed her MBBS from Kurnool Medical College, Kurnool, Andhra Pradesh, one of the oldest and premier medical colleges in India and her Post Graduation St. Martha's Hospital, Bangalore, one of the oldest Hospitals in India. Further, she has also completed her Infertility Fellowship from Indian Medical Association.
- (3) Live 100 Hospital Private Limited (Respondent No.1) is a Private



Limited Hospital was incorporated on 09.04.2007, under the provisions of the Companies Act, 1956 and it is a private unlisted Company classified as 'Company Limited by Shares'. The Respondent No.1 is a Multi-Speciality Hospital having its registered office at 104/1, Hosur Road, Singasandra, Bangalore – 560 068. The Respondent No.1 Hospital right from its inception was incurring huge losses and had failed to generate any profits even for a single year. The Respondent No. 2 in the name of the Respondent No.1 Hospital had also availed a loan from Canara Bank amounting to almost 50 crores. A charge was created in favour of Canara Bank on the Respondent No.1 Hospital's assets for Rs.38 Crores, which was subsequently modified and increased to Rs. 51.32 crores. The Respondent No.2, in the name of Respondent No.1, had also availed a loan from Reliance Consumer Finance Private Limited and subsequently a charge was created on the assets of the Respondent No.1 Hospital for an amount of Rs. 1.36 Crores. Basing on the false representations of Respondent No2, she has invested almost Rs.5 crores into the Respondent No.1 Hospital and for that purpose entered into a Memorandum of Understanding dated 19/10/2011 ("**MoU**").

- (4) Subsequently, the Applicant was allotted 15,00,000/- shares on 21/11/2012 at a face value of Rs.10 and a share premium of Rs.10, total price amounting to Rs.20 per share. The equity shares were issued at a premium (**double the face value**) to the Complainant, at the time when, not only did the debt of the Hospital amount to more than double of the paid up share capital but also the Hospital had failed to generate even a single penny of profit since its inception. The Applicant paid a consideration of Rs. 3,00,00,000/- for shares whose face value amounted to only Rs.1,50,00,000/-. Additionally, the Applicant



was misled to invest another 1.8 crores into the Respondent No.1 hospital, however, no shares were issued to the Applicant against the said investment of 1.8 crores. The said investment of Rs. 1.8 crores is being shown as an unsecured loan as against the name of the Applicant (*which was due and payable on termination of the MoU*), in the Financial Statements of the Company.

- (5) It is alleged that due to gross and blatant mismanagement being committed by the hands of Respondent No.2, the Hospital incurred massive losses and also failed to pay back its loan instalments and interest. The Respondent No.2 became irregular in paying back the loan instalments and the interest which resulted in the accounts of the Respondent No.1 Hospital being downgraded to a Non Performing Asset. Subsequently, due to the irregular payment being made by the Respondent No.1 Hospital, Canara Bank vide Assignment Agreement dated 26/06/2014, assigned the said loan to Respondent No. 3 for a purchase Consideration of Rs. 54,53,00,000/-. After the loan was assigned to Respondent Nos.2 & 3 *via* Preferential Allotment of shares, allotted 7,50,000/- equity shares to Respondent No. 3 at a face value of Rs.10 on 27/07/2015 thereby diluting the equity stake of the Applicant to 9.52% which was in violation to the terms of the MoU, as per which the Applicant would at all times hold at least 10% equity stake in the Hospital. The Respondent No.2 had further borrowed a sum of Rs. 4,88,03,316/- in the year 2016 and 5,30,36,449 in the year 2017 from Respondent No.3 further pushing the hospital into irretrievable state of indebtedness. The Applicant was neither informed nor was given any justification on the how the funds were being utilized.
- (6) Subsequently, the Respondent No.3 has filed an Application under Section 7 of the IBC, 2016 for initiating CIRP against the

Respondent No. 1 Hospital in C.P. (IB) No.107/BB/2017. After considering the matter, this Tribunal, *vide* its order dated 02/04/2018 admitted the said Petition and CIRP was initiated against the Respondent No.1/ Corporate Debtor. Under the directions of the Tribunal, a forensic Audit was conducted to determine the actual affairs of the Company and a Complaint was filed before the jurisdictional Police Station. Abiding by the Orders of the Tribunal, M/s.SPR and Co., was appointed to conduct the Forensic Audit and the same was filed before the Tribunal and also before the jurisdictional Police along with the complaint dated 03/08/2018.

3. Heard Shri Manu.K, learned Counsel for the Applicant/Petitioner and Shri V. S. Raghavan, learned Senior Counsel for the Respondent Nos.1&2 and Shri S. Vivekananda, learned Counsel for the Respondent No.3. We have carefully perused the pleadings of the parties and extant provisions of the Companies Act, 2013 and Rules made thereunder.
4. The Applicant has filed C.P.No.104/BB/2020, under Sections 241 and 242 of Companies Act, 2013, by making various allegations of acts of oppression and Mismanagement and also filed I.A.No.267 of 2020, under Sections 244 (1) of the Companies Act, 2013, by seeking to waive the requisite condition to maintain the main Company Petition. The Tribunal, by separate Order dated 17th August, 2020 has waived the requisite condition to maintain the Company Petition. Therefore, the Respondents have to file their Replies with regard to various allegations made in the Company Petition, and after considering rival contentions, the Tribunal has to take a decision whether an enquiry has to be ordered or not. Hence, the instant Application is premature to consider at this stage.

5. In the result, I.A.No.268/2020 in C.P.No.104/BB/2020 is hereby disposed of by reserving right of the Applicant/Petitioner to raise the issue of investigation at the time of final hearing of the main Company Petition.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi