


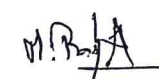
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NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

(3)

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 5/03/2018 AT 10.30 AM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER :TCP/57/2016
NAME OF THE PETITIONER(S) : T.O. Abraham
NAME OF THE RESPONDENT(S) :Cavunal Rubber Estates (P) Limited and 5 others
UNDER SECTION : 111, 397/398, 402, 403, 406 and Schedule XI

S.No.	Name (in Capital)	Represented by	Signature
1.	KAUSHIK SHARMA	COUNSEL FOR R3 & R6	
2.	M. RASHAN ATIQ	Petitioner	

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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

TCP 57/2016
(CP No.86/2010)

Under Sections 235, 237, 397, 398, 402 and 406 read with
Schedule XI of the Companies Act, 1956

In the matter of

Mr. T.O. Abraham

...Petitioner

Vs.

M/s. Cavunal Rubber Estates Private Limited & 5 Ors.

...Respondents

Order passed on 5th of March, 2018

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

<i>For Petitioner(s)</i>	<i>: Mr. M. Roshan Atiq, Counsel</i>
<i>For Respondent No.3&6</i>	<i>: Mr. Kaushik N. Sharma, Counsel</i>

ORDER

Per : CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)


1. Under adjudication is the Company Petition No. CP/86/2010 that has been filed before the erstwhile Company Law Board (CLB) and after establishment of NCLT, the same has been transferred to this Bench and renumbered as TCP/57/2016. The Petition has been filed under Sections 235, 237, 397, 398, 402 and 406 read with Schedule XI of the Companies Act, 1956.

The Petitioner is Shri T.O. Abraham and the Respondents are M/s. Cavunal Rubber Estates Private Limited & 5 Ors.

As seen from the Order dated 23.11.2016, the Respondent Nos: 2, 4 and 5 were absent and were proceeded *ex parte*.

2. The Petitioner has sought the reliefs *inter alia* to set aside the various share transfers made in favour of 3rd Respondent and rectification of the Register omitting the name of 3rd Respondent and putting the name of the Petitioner to the extent of 771 number of equity shares (equivalent to 40.90% of the total equity paid-up capital of the Company) and to declare all the proceedings of the Board Meetings of the 1st Respondent Company held between 01.01.2009 and till the date of filing of the Petition as null and void, on the ground that no notice of these meetings as provided under Section 286 of the Act, was given to the Petitioner, who is the Managing Director of the 1st Respondent Company.


3. In the Petition, the Petitioner has submitted that on 10.06.2009, an agreement was entered into for the sale of entire shares of the 1st Respondent Company, between the shareholders of that company and Respondent No.3 viz., Mr. Jose Thomas. The Petitioner has further submitted that the main contention in the said agreement was that the Petitioners in CP No. 65/2007 shall withdraw that Petition before transfer of the shares of the 1st Respondent Company in favour of the 3rd Respondent herein.

4. The Petitioner has admitted that the share transfer transactions took place within two months of the date of the agreement, as all the share certificates in the name of the shareholders other than the Petitioner herein have been endorsed in favour of the 3rd Respondent as the transfer of shares was approved by the Board of Directors of the 1st Respondent Company on 04.08.2009. 

5. The Respondent No.3 has filed counter on 02.05.2011 by making preliminary submissions. It has been submitted that the Respondent Nos. 2, 4 to 6 are no longer shareholders of the 1st Respondent Company. As each of them had agreed to transfer their shares held in 1st Respondent Company to Respondent No.3, for a total consideration of Rs.3,40,00,000/- by an agreement to transfer the shares dated 06.10.2009 and the Petitioner is one of the signatories to the said agreement.

6. The Respondent No. 3 has submitted that he has paid the consideration for transfer of shares to the Respondent Nos. 2, 4 to 6 as per their portions of shares held in the 1st Respondent Company. The 3rd Respondent would further submit that he has also made efforts to pay the consideration to the Petitioner but the Petitioner did not accept the same in a bid to frustrate the agreement dated 10.06.2009 and the Petitioner has filed the Petition for oppression and mismanagement for settling the personal score with ~~the~~ Respondent No. 3, as the intention of the Petitioner is

to renege the agreement dated 10.06.2009. The Respondent has further submitted that the Petitioner is a signatory to the agreement and has categorically agreed to transfer his shares to Respondent No.3. Therefore, he is estopped from claiming to be shareholders of the 1st Respondent Company. Therefore, the petition is liable to be dismissed on the ground that the Petitioner has *no locus standi* to pursue the Company Petition as he is not the shareholder of the 1st Respondent Company, because the Respondent No.3 is holding the entire share in the 1st Respondent Company as per the agreement dated 10.06.2009.

7. The 3rd Respondent has also placed on record the Order dated 17.10.2017 passed in RFA No. 695/2015 by the Hon'ble High Court of Kerala at Ernakulam. It may be recalled that the Respondent No.3 has filed a Suit for specific performance against the Petitioner before Sub-court, Thiruvalla as OS.No.128/2011. The Suit was decreed on 10.04.2015 in favour of the 

Plaintiff i.e., Respondent No.3, and against the Petitioner. The Petitioner i.e., Defendant in the said Suit, was directed to transfer his entire shares held by him in the 1st Respondent Company on receipt of the balance sale consideration, within 3 months, failing which, the Plaintiff who is the Respondent No. 3 herein, was held entitled to get the decree executed through Court by deposit of balance sale consideration of Rs.38 Lakhs and to realise the costs incurred in such events from Defendant/the Petitioner herein. Thereafter, an Appeal has been filed by the Petitioner/Defendant before Hon'ble High Court of Kerala. The Hon'ble High Court Kerala in RFA 695/2015 dated 17.10.2017 upheld the judgement and decree passed by the Learned Subordinate Judge, Thiruvalla in OS.No.128/2011, and the Appeal was dismissed.

8. The Respondent Nos. 2, 4 and 5 have filed counter admitting the transfer of shares held in 1st

Respondent Company vide agreement dated 10.06.2009 and prayed to dismiss the Petition.

9. In view of the legal position stated above, the Judgement/Decree passed by the Learned Subordinate Judge, Thiruvalla in OS.No.128/2011 and the dismissal of the Appeal in RFA No.695/2015 dated 17.10.2017, the Petitioner is not a shareholder in the 1st Respondent Company. Therefore, he has *no locus standi* to pursue the Petition under Sections 397 and 398 of the Companies Act, 1956 because he does not fulfil the eligibility under Section 399 of the Companies Act, 1956.

10. Accordingly, the Petition stands dismissed. Order is pronounced in open court in presence of the Counsel for both the parties.


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

P.ATHISTAMANI