

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

TCP 81/2016

(CP/98/2011)

Under Sections 111, 397, 398, 402, 403,
406, 408, 237 read with Schedule XI of the
Companies Act, 1956.

In the matter of

Mrs. R. Preetha

.....Petitioner

Vs.

M/s. Stylus Polystores Private Limited & 3 Ors.

.....Respondents

Order delivered on ^{28/11}28.11. of Feb, 2018

CORAM

CH. MOHD SHARIEF TARIQ & K.ANANTHA PADMANABHA SWAMY, MEMBERS (JUDICIAL)

For Petitioner(s) : Mr. Anant Merathia, Counsel

For Respondent(s) : Mr. Abraham Markos, Counsel

ORDER

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

1. Under examination is Company Petition No.98/2011, which has been filed under Sections 111, 397, 398, 402, 403, 406, 408, 237 read with Schedule XI of the Companies Act, 1956. There is one Petitioner and 4 Respondents in the Petition.

2. The 1st Respondent Company viz., M/s. Stylus Polystores Private Limited, was registered as Private Limited Company on 05.10.1994 with the Registrar of Companies, Kerala. The Registered Office of the Company is situated at M.P. 129, Pongumoodu, Kuvalassery P.O., Maranalloor, Trivandrum – 695 512. The 1st Respondent Company is mainly engaged in the business of manufacturing of Plastic Storage Water Tanks. The authorised share capital of the 1st Respondent Company is Rs.10,00,000/- having 10,000 equity shares of Rs.100/- each and the issued, subscribed and paid-up capital is Rs.8,90,000/- having 8,900 equity shares of Rs.100/- each.

3. The Petitioner is a promoter shareholder of the 1st Respondent Company. The Petitioner occupied the position as a Director of the 1st Respondent Company from 05.12.1994 till 03.04.2002. At the time of filing the Petition, the Petitioner has been holding 2967 equity shares of Rs.100/- each in the 1st Respondent Company constituting 33.33% of the paid-up capital of the 1st

Respondent Company. Therefore, the Petitioner holds more than 1/10th of the issued, subscribed and paid-up share capital and is eligible to file this Petition under Section 399 of the Companies Act, 1956.

4. The Respondent Nos. 2 and 3 are the Promoters/Shareholders of the 1st Respondent Company. The 2nd Respondent occupies the position as the Managing Director of the 1st Respondent Company with effect from 18.10.2007 and the 3rd Respondent occupied the position as Chairman cum Managing Director of the 1st Respondent Company from 05.10.1994 to 20.08.2008. The 3rd Respondent got inducted again into the Board of the 1st Respondent Company as a Director on 04.11.2010. The 4th Respondent is the daughter of 3rd Respondent, who was appointed as Director of the 1st Respondent Company on 03.04.2002.

5. As per Clause 33 of the Articles of Association of the 1st Respondent Company, a Director shall acquire 100 qualification shares within a period of 6 months.

from the date of appointment. The Petitioner is alleging that the 4th Respondent failed to acquire the qualification shares within the stipulated time. But, in the Annual Report, it has been shown that the 4th Respondent holds 200 shares. In fact, neither there was any transfer of shares from the existing shareholders in favour of the 4th Respondent nor the 1st Respondent Company made a fresh allotment of shares during the year, 2002.

6. It has been alleged that, in fact, the 4th Respondent is a Software Engineer employed in IT Company in Chennai and on an assignment she was out of station for more than three years during her tenure as a Director of the 1st Respondent Company. It has been stated by the Petitioner that between 03.04.2002 and 18.07.2007, (the date on which the 2nd Respondent was appointed as Managing Director with effect from 18.07.2007), there were only two Directors viz., Respondent Nos. 3 and 4 (R4 did not acquire 100 qualification shares within 6 months from the date of her appointment). In such circumstances, as to how

the Board Meetings were conducted when one of the Directors was out of station for more than three years. From the inception of the Company till December, 2002, the bank account of the Company was jointly operated by two Directors of the Company. However, this practice was discontinued from December, 2002, as the 4th Respondent was continuously out of station and was not involved in the affairs of the Company. The Board of Directors at its meeting held on 14.12.2002, passed a Resolution changing the practice of joint operation of the bank account and authorised 3rd Respondent to operate the bank account singly.


7. It has been stated by the Petitioner that a clarification has been sought from the 1st Respondent Company as to how the Board Meetings could have been conducted without a Director who was out of station for a period of more than three years, and in the said letter, the Petitioner also intimated her intention to sell her 2967 shares for a price of Rs.200/- per share. But, the Company did neither reply to any of the queries raised by the Petitioner nor did it show any


interest in the offer made by the Petitioner. The copy of the said letter dated 11.11.2007 is kept as Annexure. It has further been alleged by the Petitioner that the Company has not filed Form-32 intimating the resignation of the 4th Respondent and the Petitioner is not aware about the status of 4th Respondent in the 1st Respondent Company. However, it has been submitted by the Petitioner that the 4th Respondent was appointed as a Director on 03.04.2002 and ceases to be a Director under the provisions of Section 283(1)(a) of the Companies Act, 1956 with effect from 03.10.2002 i.e., from the end of six month, being the time given to a new Director under Clause 33 of the Articles of Association of the Company for acquiring the qualification shares.

8. For the sake of convenience, the provision of Clause 33 of the Articles of Association is reproduced below:-


“33. The qualification of a director shall be holding at least 100 equity shares in the company and the same shall be acquired within six months of becoming a director.”

The company may also appoint any other person having professional qualifications and experience relevant to the activities of the company and such person if so appointed need not hold any qualification share, provided that at any given time the board shall consist of a maximum of two person only who is not required to hold qualification share.”


9. The Petitioner states that as per Form-32 available in the MCA site, the 2nd Respondent was appointed as the Managing Director of the 1st Respondent Company with effect from 18.10.2007 and the 3rd Respondent resigned as Director on 20.08.2008, which means that both the Respondent Nos. 2 and 3 occupied the position as Managing Directors from 18.10.2007 till 19.08.2008. Form-32 shows that Mrs. Vasantha Kumari, wife of 2nd Respondent and Mr. Kiran Kumar, son of 2nd Respondent were inducted into Board as Directors on 15.01.2008 and both of them resigned from directorship on 04.11.2010. Presently the Respondent Nos. 2 and 3 are the two Directors on the Board, the 2nd Respondent occupied the position as Managing Director of the 1st Respondent Company. 


10. The Petitioner claims that apart from investing in the capital of 1st Respondent Company, she also infused money to the tune of Rs.10.25 Lakhs for its working capital requirements from time to time in the form of Unsecured Loans. This is being confirmed by Indian Overseas Bank, Killipalam Branch, Karamana, Trivandrum, Kerala, vide its letter dated 24.07.2008 and the said loan was repayable on demand. The Petitioner submits that during the year 2007, she was in need of money and had to recall the loan amount from the 1st Respondent Company. But, the 1st Respondent Company failed to repay the amount to the Petitioner. It is alleged by the Petitioner that the 1st Respondent Company all of a sudden stopped providing the Annual Reports to the Petitioner, though notice calling for AGM for the year ending on 31.03.2007 was sent to the Petitioner, but the Annual Reports for the said year was not made available to the Petitioner with an intention to keep the Petitioner in dark, which is in 


violation of the provisions of Section 219 of the Companies Act, 1956.


11. The Petitioner states that a letter has been written to the Registrar of Companies, Kerala, highlighting the violations made by the 1st Respondent Company. The Respondents in their reply dated 30.07.2008 addressed to the RoC of Kerala, levelled various allegations against the Petitioner and her husband. However, it was confirmed by the Respondents that the 4th Respondent never attended the Board Meetings and she was not at all aware as to what has been going on in the 1st Respondent Company. The copy of the complaint letter dated 02.07.2008 and the reply of the 1st Respondent Company dated 30.07.2008, and the Reply Letter dated 25.08.2008 sent by RoC to the Petitioner are placed on record. The Petitioner submits that vide letter dated 07.07.2008 she wrote to the 1st Respondent Company demanding repayment of loan, the 1st Respondent Company replied vide its letter dated 28.07.2008, no such loan amount exists, and neither 1st 

Respondent Company nor the Chairman/Managing Director owe any money to the Petitioner.


12. The Petitioner filed a Civil Suit No. OS. 318/2009 against the 1st Respondent Company before the Sub-Court, Trivandrum, the court on hearing the case, passed a Decree attaching the properties of the 1st Respondent Company. But the attachment was lifted by the said court, after the 1st Respondent Company provided security for Rs.12.30 Lakhs in the form of Fixed Deposit in favour of the Petitioner. It has been submitted by the Petitioner that after such incident, the Respondents completely stopped sending the Annual Reports to the Petitioner, which is a statutory requirement. In fact, the last Annual Report received by the Petitioner was for the year ending March, 2008. Thereafter, no Annual Report for the years 2009, 2010, 2011 was provided to the Petitioner, which is in sheer violation of the provisions to Sections 172 and 219 of the Companies Act, 1956. 

13. The Petitioner alleges that the Respondents are trying to dispose of the properties of the Company due to which they offered security in the form of Fixed Deposits for Rs.12.30 Lakhs in favour of the Petitioner. But, in order to stop the Respondents from disposing of the assets of the 1st Respondent Company, a Civil Suit has been filed before the Sub-Court, Neyyattinkara, under OS.No.292/2010 on 12.10.2010 and also released a paper advertisement in two newspapers on 16.10.2010 cautioning the public from dealing with the properties of the 1st Respondent Company. But, the Respondents, on 19.10.2010, have illegally sold the property of the 1st Respondent Company for a rock-bottom price of Rs.27.30 Lakhs, whereas there has been offer for Rs.75 Lakhs which has been received by her from Mr. Shaji Mohan, who was interested to buy the property of the 1st Respondent Company. The Petitioner alleges that she strongly believes that the Respondents would have siphoned off the monies in the said sale transaction causing irreparable loss to the 1st Respondent Company and to its shareholders. 


14. It has been placed on record by the Petitioner that during October 2011, she received a letter dated 20.10.2011 from the 2nd Respondent, wherein it has been alleged that she had diverted funds to the tune of Rs.8 Lakhs to M/s. Vanika Vaisya Trust, in which the Petitioner's husband is a Treasurer. It was stated in the Letter that the said amount has to be refunded by the Petitioner to the 1st Respondent Company with interest within 15 days, failing which the Company would forfeit 2967 equity shares held by the Petitioner in the 1st Respondent Company. The Petitioner submitted that the allegation that she has diverted the funds is absolutely baseless, because during her tenure as a Director, she was never authorised to operate the bank account individually. The 3rd Respondent, the then Chairman cum Managing Director was authorised to operate the bank account of the 1st Respondent Company jointly with any one of the Directors and no cheque could have been honoured by the bank if the same has been signed by the Petitioner individually. Therefore, the question of issuing a cheque by the 

Petitioner in favour of a Trust and the bank honouring the said cheque signed by the Petitioner individually, does not arise. The Petitioner in her reply letter dated 04.11.2011 denied all the charges framed by the 2nd Respondent. The Petitioner further alleges that the 2nd Respondent was the Managing Partner of a firm viz., M/s. Associated Business Combines, to which he diverted the funds from 1st Respondent Company. In fact, the said Firm was one of the distributors of the water tanks manufactured by the 1st Respondent Company and on account of supply of products to the said Firm, balance outstanding as Sundry Debtors from the said Firm was to the tune of Rs.3.42 Lakhs, but in order to escape the liability, the 2nd Respondent dissolved the Firm during May, 2002. This has been confirmed by the 2nd Respondent in the reply letter dated 30.07.2008 to RoC, Kerala and also in Letter dated 06.05.2002. The perusal of the balance sheet as on 31.03.2008 of the 1st Respondent Company would reveal the fact that funds have been diverted to the said Firm by the 2nd Respondent even during the year 2007-


2008, when the Firm was actually dissolved during May, 2002. The balance outstanding under the heading "the Sundry Debtors" as on 31.03.2007 would clearly reveal the fact that entries have been made to show that the products of the company were supplied to M/s. Associated Business Combines, [i.e. the dissolved Firm] during the year 2007-08. The amount of outstanding from the said firm as on 31.03.2007 has been shown as Rs.3,41,956.18p and the balance as on 31.03.2008 has gone upto Rs.6,58,778/-. The Annual Report for the year 2007-08 is filed with the Petition.

15. The Petitioner alleges that recently she has received a notice dated 15.11.2011 calling for an EoGM of the 1st Respondent Company on 08.12.2011, to consider the forfeiture of 2,967 equity shares held by the Petitioner towards the recovery of misappropriated amounts of Rs.8.00 Lakhs together with interest due to the Company. The Petitioner contends that the said notice is absolutely invalid as the resolution proposed to be passed is against the provisions of law and Articles of Association of the Company. The fully paid-up equity 

shares cannot be forfeited and all the 2,967 shares held by the Petitioner are fully paid-up. The Petitioner further states that even assuming without admitting the fact that the Petitioner owes money to the 1st Respondent Company, the same cannot be adjusted by forfeiting of equity shares that are fully paid up.

16. The Petitioner alleges that the notice dated 15.11.2011 is defective, as no explanatory statement as required under the provisions of Section 173(2) is attached to the notice. The provisions of Section 173 (2) are applicable to the 1st Respondent Company because the Articles of Association of the 1st Respondent Company is silent on the non-applicability of the said Section. The Petitioner submits that the notice dated 15.11.2011 is an invalid notice, and the Resolution proposed to be passed at the said meeting is illegal and *ultra vires*, of the Articles of Association. She has prayed to the then CLB to immediately intervene and restrain the 1st Respondent Company from conducting EoGM scheduled on 08.12.2011 and forfeiting the shares of the Petitioner. The then CLB vide its Order 

dated 7.12.2011 passed the directions that EoGM dated 8.12.2011 shall be subject to the final outcome of the Company Petition and the Respondents were directed not to implement any resolution passed in EoGM on 08.12.2011 regarding 2,967 equity shares held by the Petitioner and restrained the Respondents from filing any documents, returns, forms, report, certificate, balance sheet, statements on behalf of the 1st Respondent Company. The said interim order has been extended by the CLB vide its Order dated 05.01.2012 until further orders.

17. Based on the facts and circumstances stated above, the Petitioner submits that, the acts of the Respondents have resulted in oppression to the Petitioner, which are also against the interest of the 1st Respondent Company. The affairs of the 1st Respondent Company are being conducted in a manner prejudicial to the public interest and members of the Company. The 1st Respondent Company is fit to be wound up under just and equitable grounds. But, if any such order is passed, it would unfairly prejudice the interest 


of the members. Having stated as above, the Petitioner prayed as follows:-

i. Setting aside the illegal sale of properties of the first Respondent Company and direct the Respondents to make good the loss suffered by the first Respondent Company in the course of the sale transaction;

ii. Direct the Respondents to make good the loss suffered by the first Respondent Company by deviating funds through the dissolved firm Associated Business Combines;


iii. Direct the Respondents to make good the loss suffered by the first Respondent by deviating funds towards Lease money deposit;

iv. Directing the first Respondent Company to produce all relevant documents to prove that Fourth Respondent has acquired the qualification shares as required under the Articles of Association of the Company and that board meetings were actually conducted during the period from 03.04.2002 to 18.07.2007;

v. Directing the first Respondent Company to rectify the register of members giving effect to the deletion of the name of fourth Respondent as a member; 

vi. Any other order as may be deemed fit by the Hon'ble Bench"

18. The counter has been filed by the Respondent No.2 on behalf of all other Respondents. He stated in the counter that being the Chairman and Managing Director of 1st Respondent Company, he is well aware of the case and competent to depose to the same and he is duly authorised by other Respondents. But, there is nothing on record to show that the other Respondents have given the authority to him to file the counter on their behalf.

19. The allegations contained in the Petition are denied as baseless and contrary to the facts. It has been stated by the Respondents that since incorporation of the 1st Respondent Company in the year 1994, the husband of the Petitioner, Mr. S. Valayudhan was looking after the financial affairs of the Company and other related matters. He was the internal auditor of the 1st Respondent Company till 


18.10.2007, when the present management took over the charge of the 1st Respondent Company.

20. It has been alleged by the Respondents that the Petitioner and her husband were having custody of all the records pertaining to the Company and had completely excluded the other Directors from the management of the affairs of the 1st Respondent Company. The Petitioner and her husband were acting in hand-in-glove to the utter prejudice of the shareholders of the 1st Respondent Company till 18.10.2007.

21. It has been alleged by the Respondents that when newly elected Directors of Company requested custody of all books of accounts and other records/documents of the 1st Respondent Company, the Petitioner and her husband forcefully refused to hand over possession of the said documents and the Petitioner's husband forged, fabricated documents with the signature of the previous Managing Director i.e. the 3rd Respondent, recording therein that all record and documents


pertaining to the 1st Respondent Company were handed over and accepted by him (i.e. 3rd Respondent). On filing a Suit i.e. OS No.1722/2007 before the Ld. Munsiff's Court at Neyyatinkara, an inspection was carried out at the office premises of the Petitioner's husband by an Advocate Commissioner appointed by the said court, it was found that all books and accounts and records/documents pertaining to the 1st Respondent Company were found in the office of the Petitioner's husband. The husband of the Petitioner in connivance with the Petitioner suppressed their illegal diversion of money from the company's account for their personal gain, as the 3rd Respondent was Managing Director only for name sake and was totally kept in dark about the affairs of the company. The Petitioner and her husband even forged the signature of the 3rd Respondent to legalize several of their misdeeds.

22. The Respondents state that they have filed the Criminal Miscellaneous Petition No.2728/2008 against the husband of the Petitioner for fabrication of false

receipt and forging the signature of 3rd Respondent. It has also been stated that on 21.07.2005, the Excise raid was conducted at the factory premises of the 1st Respondent Company, at the office of the husband of the Petitioner, it was found that all the books of accounts of the Company were kept in the custody of the husband of the Petitioner. It has further been alleged that the entire Working Capital of Rs.15 Lakhs sanctioned by the 1st Respondent Company had been swindled by the Petitioner and her husband, who had been running the 1st Respondent Company resorting to utter suppression and mismanagement of the affairs of the 1st Respondent Company, as huge sums of money was availed as loan from various financial institutions on behalf of the 1st Respondent Company, which has been used for the personal benefit and gain of the Petitioner and her husband and no repayment was made. The dues of the 1st Respondent Company had been settled by disposing certain assets of the Company by convening AGM on 01.07.2010 after sending due notice to all the shareholders including 

the Petitioner on 06.06.2010, under certificate of posting. The Petitioner never turned up for the said meeting and the Resolution passed therein is extracted as below:-

“Resolved to authorise the chairman and Managing Director Sri. S. Ravindranathan Nair and Sri K.K. Vishwanathan Pillai, Shareholder and previous Managing Director of the Company to dispose of in the best interest of the Company, the Company’s property in Sy. No.117/21 of Maranaloor Village, comprising of 60 Cents together with the factory shed, machinery, moulds and fixtures and execute all necessary documents as required for the purpose, together with Sri. K.K. Vishwanathan Pillai as the authorised signatory”

23. The answering Respondents submit that the said property was sold for Rs.27.30 Lakhs, i.e., the actual market value prevalent in the locality at the relevant time. The Respondents referred to a Kerala Gazette Notification dated 06.03.2010 which at item No.9 shows the fair value of the said property, the same has been enclosed which is marked as Annexure 6. The Respondents have stated that the offer of Rs.75 Lakhs about the said property as claimed by the Petitioner was fake. The consideration received on account of the 

sale of the property ^{was} ~~is~~ utilised for repayment of loan to [^] the State Bank Travancore, SME Branch, Thrivanthapuram to the extent of Rs.25 Lakhs as One Time Settlement (OTS), and the rest of the money was used to lift the attachment against the sale of the said property in OS No.318/2009 pending before the Sub-court, Thrivananthapuram.

24. It has been alleged that the Petitioner's husband has sold the adjacent property to the 1st Respondent Company comprising an extent of 1.25 acres on 25.10.2007 for a paltry sum for sum of Rs.15 Lakhs. The said property had direct main road access unlike the plot in question and going by the logic of the Petitioner, the said transaction is also to be deemed as fraudulent transactions. The Respondents further alleged that the present management was struck in dark regarding the operations of the 1st Respondent Company prior to 2007 and on the enquiries regarding the operations of the 1st Respondent Company prior to 2007, it revealed that apart from various other financial misdeeds, the Petitioner had signed and


issued the 1st Respondent's cash credit cheque No.8107 dated 07.12.2001 for Rs.8 Lakhs to viz., Vanika Vaisya Trust, in which the husband of the Petitioner is treasurer. Due to which, notice dated 20.10.2011 was issued requiring the Petitioner to pay the entire amount of Rs.8 Lakhs together with Bank interest, within the period of 15 days failing which it was specifically informed that the shares of the Petitioner would be forfeited.


25. It has been stated that a notice dated 15.11.2011 was issued to the shareholders calling for an EoGM on 08.12.2011 specifying the purpose of such EoGM i.e. the proposal to take action against the 3rd Respondent also, as at the relevant time he was the Managing Director of the company. The Respondents claim that the said action initiated against the said persons based on the specific clause provided in the Articles of Association which is extracted as below:-

“8. The company shall have a first and paramount lien and charge on all the shares registered in the name of a member (whether solely or jointly with others) for all amounts


due to the Company from him or his estate, either alone or jointly with any other person whether a member or not and whether such amounts are presently payable or not. The company's lien on a share shall extend to all dividends payable thereof"

26. The Respondents in the reply have admitted that the 4th Respondent has vacated her office as a Director w.e.f. 18.10.2007. However, it has been claimed that she still holds the qualifying shares of 200 shares in the 1st Respondent Company. The Respondents have denied the fact pertaining to the investment of an amount of Rs.10.25 Lakhs in the 1st Respondent Company by the Petitioner, and stated that the money suit is pending consideration before the Civil Court. The entire claim is based on a letter dated 01.11.2006 forged by the Petitioner's husband and allegedly issued by 3rd Respondent. The 3rd Respondent has denied having signed and issued any such letter dated 01.11.2006.

27. The Respondent denied the allegations levelled by the Petitioner that the Annual Report was not sent along with the notice issued for AGM for the year 


ending 31.03.2007. It has specifically been pleaded by the Respondents that the forfeiture of shares of the Petitioner is done only in accordance with the provisions of the Articles of Association of the 1st Respondent Company on account of issuance of cheque No. 008107 for an amount of Rs.8 Lakhs drawn on State Bank of Travancore, SSI Branch in favour of M/s. Vanika Vysya Education Trust, that was issued by the Petitioner. As per the direction of the Petitioner/her husband, the 3rd Respondent used to sign 4-5 blank cheque leaves of the cheque book and entrust the same to the Petitioner's husband. Since the other signatory was the Petitioner herself, so she could have easily managed it as and when a cheque was required to be issued and en-cashed. Having said so, it has been denied that any funds were deviated or misused by the present management. It has also been asserted by the Respondents in the reply that the notice dated 15.11.2011 issued to the shareholders calling for an EoGM on 08.12.2011 is perfectly in compliance with the provisions contained in Section 

173 (2) of the Companies Act 1956, and there is no violation or suppression of the rights of the Petitioner or any mismanagement of the affairs of the 1st Respondent Company as alleged by the Petitioner. Having stated so, the answering Respondents prayed to dismiss the Petition with costs to the Respondents.

28. The Petitioner has filed the Rejoinder and stated that the 2nd Respondent filed a reply on behalf of the other Respondents without placing on record any authority given to him. It has been stated by the Petitioner that the Respondents have made the allegations to appear as if the Petitioner and her husband were managing the affairs of the 1st Respondent, and the Respondents had got nothing to do with the affairs. It has been mentioned by the Petitioner that she resigned as Director way back during the year 2002 and even when she was a Director was not in-charge of day to day affairs of the 1st Respondent Company, it was the 2nd Respondent 

who was the Managing Director and managing the affairs of the Company.

29. The allegations levelled by the Respondents in the Counter against the Petitioner and her husband have been denied. It has specifically been stated that the 3rd Respondent was occupying the position as Chairman and Managing Director till 20.08.2008. Therefore, it is not open to the 3rd Respondent to level such allegations against the husband of the Petitioner. It has also been denied that the statutory record was and is under the custody of the Petitioner and her husband. The Petitioner submits that neither she indulged in any such act before 08.10.2007 nor after the said date.

30. The Petitioner has denied the allegations levelled by the respondent i.e., repeated demands were made for return of books and documents/records. However, it has been admitted by the petitioner that certain files and records that were brought by the 3rd Respondent to the office of the Petitioner's husband for seeking 


professional clarifications and advices were for some time kept in the office of the Petitioner's husband, but were personally taken back by the 3rd Respondent, after giving proper acknowledgment in his letter dated 17.09.2007 to the staff in the office and the Respondents themselves have filed the notice dated 24.08.2007 calling for AGM on 18.09.2007 for adoption of accounts for the year ending 31.03.2007, which means that the books of account and statutory records are very much under the custody of the Respondents and not with the Petitioner or her husband. It has also been denied that the Petitioner's husband forged the signature of the 3rd Respondent. The Petitioner has further stated that the 2nd Respondent filed a complaint in Calendar Case No.148 of 2004 before the Judicial First Class Magistrate, Kattakada, Kerala, against the Petitioner, her husband and the 3rd Respondent alleging fabrication of minutes, withdrawal of amounts from the 1st Respondent Company, the said complaint was forwarded for investigation to Sub

Inspector of Police and finally the Court discharged the accused, when no allegation was proved.

31. The Petitioner has denied the allegations levelled by the Respondents in the Counter that the Petitioner and her husband illegally diverted money from Company's funds. The Petitioner also denied the allegations of the Respondents that any loan was taken during 2007-2008, because she being the Director resigned during 2002 and cannot have swindled the loan availed by the Company during 2007. It has further been explained that the allegations of the Respondents is an attempt to justify the reason for the sale of the property, which they sold during the year 2010, which has happened because of mismanagement of the 1st Respondent Company. The Petitioner further states in the Rejoinder that the assets of the Company are being disposed off for repaying the debts of the Company, such a practice is definitely an act of mismanagement that is prejudicial to the interest of the Company.


32. It has also been explained by the Petitioner in the Rejoinder that the notification which has been filed by the 2nd Respondent is not relevant for the sale of the Company's property, the property sold is 60 cents of land in Resurvey No.117 with sub-division No.21 i.e., Resurvey No.117/21, but under para 8 of the Counter Affidavit the Respondents, mentioned Resurvey No.117 and subdivision No.6, i.e., 117/6, which is described as a garden land without road, so the description of the property owned by the 1st Respondent Company cannot be matched with the description of the property shown in the notification. It has been stated in the Rejoinder that the property owned and sold by the 1st Respondent Company is 60 cents of developed commercial land in Resurvey No.117/21 with constructed area of more than 10,000 Sq. ft, consisting of factory buildings, offices, generator room, staff quarters, security room, well, water ponds, pump house and all other infrastructure facilities for good industry, with 5 meters wide road for lorry ingress and regress. Therefore, when the value of the building and

other infrastructure developments are considered it would easily fetch more than Rs.85 lakhs. Therefore, the 2nd and 3rd Respondents had siphoned a huge amount in this sale transaction, cheating the other shareholders and the 1st Respondent Company. The Petitioner in the Rejoinder stated that in case any such cheque was issued to said Trust viz., M/s. Vanika Vaisya Trust by the Petitioner, they should have raised the issue at the time of finalizing the accounts for the year ending 2007 but they have sent a notice only during the year 2011 which proved that there was no such cheque issued by the Petitioner and the Respondents have sent notice dated 20.10.2011 to harass the Petitioner, whereas fully paid up equity shares cannot be forfeited; even as per Clauses 11 to 15 of the Articles of Association of the Company.

33. The Petitioner reiterated in the Rejoinder that she has not given any cheque to the said Trust, a perusal of the balance sheet filed by the 1st Respondent Company with RoC, Ernakulam, would prove beyond doubt that no amount is due from M/s. Vanika Vaisya 

Trust, the Respondents ^{have} ~~are~~ attempted to create a ^{mu} liability on the Petitioner only to forfeit the shares held by the Petitioner, which is illegal.

34. The Petitioner further submits in the Rejoinder that the EoGM dated 08.12.2011 convened to consider the forfeiture of 2,967 equity shares held by the Petitioner towards recovery of the misappropriated amounts of Rs.8 lakhs together with interest stated to be due to the company is illegal. The notice dated 15.11.2011 is defective as no explanatory statement as required under the provisions of Section 173(2) of the Companies Act, 1956 was attached to the notice. Therefore, the notice is invalid. Consequently, the meeting is illegal and ultra vires the Articles of Association.

35. Based on the above grounds, the Petitioner submits that a clear case of oppression and mismanagement is made out against the Respondents and prayed to grant all the reliefs sought in the Petition. 

36. Based on the pleading of the parties, the following issues are framed:-

i) Whether 60 cents of land under Resurvey No.117/21 owned by 1st Respondent Company has been sold by the Respondents on 19.10.2010 illegally for rock bottom price of Rs.27.30 Lakhs?

ii) Whether the Petitioner and her husband along with Respondent No.3, diverted funds pertaining to 1st Respondent Company to the tune of Rs.8 Lakhs by issuing 1st Respondents' cash credit cheque No.8107 dated 07.12.2001 to Vanika Vaisya Trust?

iii) Whether the forfeiture of 2,967 shares held by the Petitioner in 1st Respondent Company in the EoGM held on 08.12.2011 is legally tenable?

Issue-i)

37. The Petitioner would contend that the Respondents on 19.10.2010 have illegally sold the property i.e. 60 cents of land in Resurvey No.117/21

owned by the 1st Respondent Company for a rock bottom price of Rs.27.30 Lakhs, whereas there has been an offer for Rs.75 lakhs for the said property. The Petitioner submits that she strongly believes that the Respondents would have siphoned off monies in the said sale transaction causing irreparable loss to the Company and its shareholders.


On this issue, the Respondents would contend that the offer for Rs.75 Lakhs was fake and the dues of the 1st Respondent Company snowballed into a huge sum by 2007 and the Respondent had to settle the same by disposing certain assets of the Company. Therefore, after notice dated 06.06.2010 duly served to all the shareholders, an AGM was convened on 01.07.2010, and it was resolved to sell property in Survey No.117/21 comprising of 60 cents with factory shed etc., in the best interest of the Company and out of the sale proceeds of Rs.27.30 Lakhs, an amount of Rs.25 Lakhs was paid to State Bank of India to settle its claim as 'One Time Settlement' and remaining portion of sale consideration was spent to get the

attachment order vacated that was issued in OS No. 318/2009 by Sub-Court, Thiruvananthapuram.

In fact, the Petitioner could not establish the fact with any documentary proof that the property in question was of more value than the consideration amounting to Rs.27.30 Lakhs received by the Respondents. Moreover, it appears that sale of the property was necessary to settle the claim of the State Bank of India, and to get the attachment order vacated that was issued against the same property as explained above. Further, it is settled legal position that the commercial decisions of the Directors/Shareholders cannot be the subject matter of scrutiny under Sections 397 and 398 of the Companies Act, 1956. In this connection, a reference may be made to the rulings given in **“A. Ravi Shanker Prasad Vs. Prasad Productions P. Ltd”**, reported in (2007) 135 Com Cases 416, and **“Rutherford Re”**, reported in 1994, BCC 876, 879. In the said cases, it was held that commercial decision did not require any judicial interference, and even if it is misjudgement, the same

will not amount to oppression or mismanagement. Moreover, a single act of financial mismanagement does not have continuous effect which is necessary for grant of relief under Sections 397 and 398, though the same could cause a short term diminution in share value. Therefore, in the light of the principle laid down in these cases, the decision taken by the shareholders for sale of the property in question appears to be in the best interest of the 1st Respondent Company.

Issue-ii & iii)

38. These issues are interlinked, so are taken together. On these issues the Respondents have submitted that the Petitioner had signed and issued 1st Respondent Company's Cash Credit Cheque No.8107 dated, 07.12.2001 for Rs.8 Lakhs to Vanika Vaisya Trust (in short Trust) in which the husband of the Petitioner was Treasurer. There was no board resolution authorising such payment, and the 1st Respondent Company had absolutely no dealings with the said Trust. 

The Petitioner would contend that in case any such Cheque was issued to the Trust, the Respondents should have raised the issue at the time of finalising the account for the year ending 2007, and the mere fact that the Respondents have sent the notice on 20.10.2011 it would prove that there was no such cheque issued by the Petitioner. It may be recalled that a notice dated 20.10.2011 has been issued by 2nd Respondent to the Petitioner to refund Rs.8 Lakhs to the 1st Respondent Company with interest within 15 days, failing which the Company proposed to forfeit 2,967 equity shares held by the Petitioner in 1st Respondent Company. The Petitioner did not comply with said notice, then on 15.11.2011 a notice was issued to the shareholders including the Petitioner calling for EoGM on 08.12. 2011. In the said EoGM, 2967 shares of the Petitioner were forfeited under clause 8 of the Articles of Association. The provisions of Clause 8 of the AoA have already been extracted under para 25 herein above. The 2nd Respondent was also authorised to initiate action against 3rd Respondent.

The reason for taking action against the Petitioner and 3rd Respondent is that during 2001, there were two signatories i.e. Petitioner and 3rd Respondent for operating Bank Account of 1st Respondent Company, and as per the direction of the Petitioner/her husband, 3rd Respondent used to sign 4-5 blank cheque leaves of the cheque book and entrust the same to Petitioner's husband. The Petitioner being the other signatory, easily managed to sign one of the cheques for an amount of Rs.8 Lakhs and issued in the name of the Trust, which was got en-cashed by the Trust from the bank, as both the signatories have signed the same. It is admitted fact that the Petitioner was inducted into the board on 05.12.1994 and the board consisted of two Directors viz., Petitioner and 3rd Respondent when the Petitioner resigned from the board on 03.04.2002, till then the petitioner and the 3rd Respondent were joint signatories for the account of the 1st Respondent Company. Therefore, it is established that an amount of Rs.8 Lakhs from the accounts of the 1st Respondent

Company was diverted by the Petitioner to the Trust, in which the husband of the Petitioner was a treasurer.

39. Further, the petitioner would contend that fully paid-up equity shares cannot be forfeited, and all the 2,967 shares held by the Petitioner are fully paid-up. The Petitioner states that even assuming without admitting the fact that the Petitioner owes money to the 1st Respondent Company, the same cannot be adjusted by forfeiting of equity shares that are fully paid up.

40. In this context Para 8 of the Articles of Association of the 1st Respondent company may be referred to which provides for first and paramount lien and charge on all the shares registered in the name of a member (whether solely or jointly with others) for all amounts due to the Company from him. Para No 8 of the Articles of Association of the 1st Respondent Company is again reproduced for the sake of convenience as follows;-

*"8. The company shall have a first and paramount lien and charge on all the shares registered in the name of a member (whether solely or jointly with others) for **all amounts due***

to the Company from him or his estate, either alone or jointly with any other person whether a member or not and whether such amounts are presently payable or not. The company's lien on a share shall extend to all dividends payable thereof" (emphasis is supplied).

It is well settled principle of law that a lien is the right to retain possession of a thing until a claim is satisfied.

In the case of a company lien on a share means that the member would not be permitted to transfer his shares unless he pays his debt to the company. The articles generally provide that the company shall have a first lien on the shares of each member of his debts and liabilities to the company. The articles may give the right of lien over share either for unpaid calls or for any other debt due by the member of the company.

The company may have lien on fully paid-up shares.

The lien also extends to the dividends payable on the shares. In this case Para No 8 of the Articles of Association of the 1st Respondent Company as extracted above provides for lien over shares for unpaid calls or for any other debt due by the member of the company. It appears from the language used in Para 8 of the AoA that the company has lien on fully paid-up

shares. Therefore, the argument of the petitioner that an amount of Rs 8 lakhs cannot be adjusted by forfeiting of equity shares that are fully paid up, stands rejected.

41. It has been contended by the petitioner that notice dated 15.11.2011 is defective, as no explanatory statement as required under the provisions of Section 173(2) of the Companies Act, 1956 was attached to the notice so the same is invalid, consequently, the meeting is illegal and ultra vires the Articles of Association. The object of enacting Section 173 of the companies Act ,1956 is that all the facts which have a bearing on the issue on which the shareholders have to form their opinion must be brought to the notice of the shareholders so that they can make an intelligent judgment. In this case the petitioner has received the notice dated, 20.10.2011 issued by 2nd Respondent to refund Rs.8 Lakhs to the 1st Respondent Company. So the notice 15.11.2011 for holding EOGM on 08.12.2011, for forfeiture of the shares of the

petitioner, even if, has been lacking explanatory statement as required under the provisions of Section 173(2) of the Companies Act, 1956, cannot be said to be defective for the reasons that the petitioner was well aware about the material facts of the agenda of the EOGM. In a similar set of circumstances, the Hon'ble High Court of Madras in *C.R. Priyachandrakumar and Ors., v/s Purasawalkam Permanent Fund Ltd. and Anr.*, reported in [1995]83CompCas150 (Mad), has observed that the provisions of Section 173(2) of the Companies Act, should not be construed in a rigid manner and should not be made so as to hamper the conduct of business. The notice has to be construed in a realistic business-like manner and if it satisfies the essence of section 173(2) of the Companies Act, the meeting should not be invalidated on the technical ground that the notice has not complied with section 173(2) of the Companies Act. The court further observed that *'if the shareholder is aware of the material facts pertaining to the transaction to be carried out at the meeting, he cannot reasonably complain of any insufficiency of*

notice'. Thus, the decision taken in the light of para 8 of the Articles of Association by the majority of the shareholders of the 1st Respondent in EoGM held on 08.12.2011 does not appear to have been suffering from any illegality.

42. The sole object of filing the petition by the petitioner is to stop the forfeiture of 2,967 shares held by her in the 1st Respondent Company, and the petitioner did not refund Rs.8 Lakhs paid to Vanika Vaisya Trust through Cheque No.8107 dated, 07.12.2001 from the accounts 1st Respondent Company. Thus, the petitioner has not come with clean hands for seeking reliefs under Sections 111, 397, 398, 402, 403, 406, 408, 237 read with Schedule XI of the Companies Act, 1956. Therefore, the petitioner ^{is} not entitled to any of the reliefs prayed for. This view is fortified with the ruling given in *Sri Kanta Datta Narasimharaja Wadiyar -vs- Venkateshwar Real Estates Pvt. Ltd, - (1991) 3 Com.LJ 336 (Karn)*, wherein it has been held that one who seeking equitable relief

must come with clean hands and good conduct, failing which he would constitute a gross abuse of the process of Court and is not entitled for any relief under Sections 397 & 398 of the companies Act, 1956.

43. Accordingly the TCP No. 81/2016 Stands dismissed. There is no order as to costs. The interim order(s), if any, stands vacated.

44. The order is pronounced in the open court in the presence of the counsels of both the parties on

28th Feb. 2018.


(K. ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

P.ATHISTAMANI


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