

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH**

C.P.No.30/2018  
(Diary No.01(70)/2018)

*Under Section 130/213/241/242/244(1) & 59 of the Companies Act. 2013*

In the matter of:

Ms Shehla Rahman ... Petitioners  
-Versus-  
M/S Shamshun Tea & Industries (P) Ltd. & Ors. ... Respondents

Coram:

Hon'ble Mr Justice P K Saikia, Member(J)

.....

**ORDER**

**Date of Order: 14<sup>th</sup> September 2018**

Heard Mr S. Dutta & Ms A. Rahman, learned Advocates and Mr H.M. Varma, CA, for the petitioner.

2. This petition, under Sections 130/213/241/242/244(1) & 59 of the Companies Act. 2013 (in short, Act of 2013), has been filed by the petitioner, Ms Shehla Rahman, seeking various reliefs incorporated therein.

3. The company, namely, Shamshun Tea and Industries (P) Ltd (hereinafter referred to as the company) was incorporated in the year 1984 under the Companies Act, 1956 (in short, Act of 1956) with its registered office at Dibrugarh with an authorized share capital of Rs.10 lakhs divided into 10,000 equity shares of Rs.100/- each. The issued, subscribed and Paid-up Share Capital of the company was one 1 lakh 10 thousand.

4. The petitioner has claimed that she along with her parents, brothers and sisters were the original shareholders of the company. The petitioner's shares in and of the company was 50. Her father and mother held 60 shares in and of the company and on their death, by way of transmission also, she became one of the legal heirs in respect of the shares held by her parents and as such she has the requisite qualification to file the present proceeding.

5. It is alleged that the affairs of the company were conducted properly upto 2006 when the company was managed by a Board of Directors consisting of Mrs Khurshed Ara Rahman, Mr Shaukat Md. Rahman, Mr Tariq Md. Rahman and Mr Sajeed Md. Rahman. However, thereafter the respondents, more particularly respondent Nos.5 & 7 started conducting the affairs of the company in a most fraudulent manner on fabricating very many false documents which were submitted to the authority concerned from time to time to show that the affairs of the company were conducted in a manner authorized by law and rules framed thereunder.

6. However, such purported claims are far from truth. In that connection, it has been submitted that though respondent Nos.5 & 7 are shown to be the Directors of the company on and from 2008, in fact, they fraudulently made entry into the company only in 2009. But the statutory documents pertaining to the period 2004-09 nowhere shows that those two persons were Directors of the company during the period between 2004-09. However, by fabricating very many documents including the DIN, they have showed themselves to be legally appointed Directors of the company w.e.f. 2004.

7. It has also been alleged that no Annual General Meeting (in short, AGM) has been convened over a long period of time inasmuch as the petitioner being one of the original shareholders of the company have not even been served with any notice of AGM which is statutorily required to be conducted every year.

8. What is worse, though the authorized capital of the company was shown to have increased from 10 lakhs to 90 lakhs, at no point of time, any AGM or Extraordinary General Meeting (in short, EOGM) was convened to adopt such resolution to increase the share capital from 10 lakhs to 90 lakhs. The fact that no statutory fees were paid to the concerned Government for increase of share capital

from 10 lakhs to 90 lakhs which shows that the increase of 10 lakhs to 90 lakhs was done fraudulently.

9. Equally importantly, a large part of the garden was mortgaged to the Andhra Bank to obtain a loan of Rs.49 lakhs for replantation of tea bushes in the tea garden. But without planting a single tea bush, the entire fund was pocketed by respondent Nos.5 & 7. It has been alleged that all such misdeeds were done by respondent Nos.5 & 7 in league with other respondents.

10. On coming to know about the alleged illegalities, the petitioner reported the matter to the concerned Registrar of Companies (in short, ROC) seeking appropriate reliefs as well as action against the culprits who had conducted the business of the company in a most fraudulent manner vide letter dated 14.02.2015. For ready reference, same is reproduced below:

*"Dear Sir,*

*I beg to state that the above named company was incorporated on 18.08.1984. The authorized and paid-up capital of the company was and is Rs.10 Lacs and 1.1 Lacs only respectively. The Directors of the above company ever since 1986 and as per the **LAST ANNUAL RETURN as at 29.06.2006** filed by the Company on 31.01.2007 have been:-*

1. Mrs Khursheed Ara Rahman
2. Mr Shaukat Md. Rahman
3. Mr Tariq Md. Rahman
4. Mr Sajeed Md. Rahman

*"That no Annual Return or any Form No.32 in respect of any change in particulars of Directors was filed after the filing of the last AR as at 29.09.2006 on 31.01.2007 or any time after 1986 by any of the above noted Directors on behalf of the Company till 2009 and at any time thereafter. The above noted directors as shown in ARs for 1986 to 2006 continued till 2009 and even till today.*

*"That on 03.02.2009 one Mr Vinod Agarwal, falsely representing himself as Director of the Company since 29.09.2004, filed one Form DIN-3 representing himself and one Mr Surajeet Sikdar as the two Directors of the Company since 29.09.2004. The said DIN-3 Form also appears to contain a FALSE CERTIFICATE from one Mr Sanjay Kumar Baid, a Company Secretary (M.No.14782) certifying that he had verified the particulars contained in DIN-3 from the records of the company and found them to be true and correct. The said certificate is patently false as the two persons were and are not Directors as per ARs as on 29.09.2005 and 29.09.2006 and further there is no Form No.32 on record evidencing the appointment of these two persons. Therefore on grounds stated above, the DIN-3 Forms are factually incorrect.*

*"And on the basis of the said FALSE Form DIN-3, **your honour without any prima facie scrutiny** have granted an unlimited licence to Mr Vinod Agarwal and Mr Surajeet Sikdar as the only **authorized persons/signatory** of*

the company to file documents with your honour **and allowed them to perpetuate further and subsequent frauds** by enabling and arming them with the power to file false ARs and Balance Sheets for the year ended 31.03.2007 and onwards by getting the same certified and audited by Ruchika Agarwal and Mr Kishore Lal Third, Chartered Accountants who were appointed by Mr Vinod Agarwal, the unauthorized person. The appointment of Chartered Accountants were invalid as having not been appointed by true Directors of the Company. Even otherwise the audited Balance Sheet and Audit Reports are false in so much so even earlier year Balance Sheets and opening balance were not considered, these are based on imaginary figures without any books of accounts. Further all the compliance certificates given by the company secretaries are false.

"That Mr Vinod Kumar Agarwal and party have prepared false Balance Sheet and Annual Returns and other forms of the said Company for the year ended on 31.03.2007 and onwards in collusion with the said Chartered Accountants and Company Secretaries and filed the false document with your honour.

"That the **Authorised Capital** of the Company as it appears from the MOA and AOA and last AR as on 29.09.2006 is **Rs. 10 lacs** only. Since incorporation of the company and particularly since the date of last AR as on 20.09.2006, the Authorised Capital of the Company was neither increased nor any Form No.5 (Notice of Increase in Authorised Capital) u/s 97 of the Companies Act, 1956 was filed NOR ANY FEES FOR INCREASE OF AUTHORISED CAPITAL WAS PAID. But Vinod Agarwal and party have filed all documents **showing** the Authorised Capital of **Rs.90 Lacs since 31.03.2007 without paying the fees** for increased capital. Please note that all those documents have been authenticated by Chartered Accountants and Company Secretaries. By not paying the fees on the increased capital the govt. too has been deprived of revenue.

"From the ARs filed for the years 1986 to 2006 your honour will find that I am a shareholder of this Company. Further I am a legal heir of my father Late M.A. Rahman, the founder shareholder, and I am entitled to the shares held by my late father.

"Your honour is therefore requested to –

- (i) **take necessary action** under Section 206 to 209 of the Companies Act, 2013.
- (ii) **Cancel the signatures** of Mr Vinod Agarwal, Mr Surjit Sikdar and of any other person subsequently certified as authorized signatories by them.
- (iii) **Reject and cancel** the said DIN-3 and all ARs, Balance Sheets, compliances Certificates and all other documents filed by these unauthorized persons since February 2009 and
- (iv) **take suitable exemplary penal action** according to law against the guilty persons including the several Chartered Accountants and Company Secretaries involved in this fraud.

Thanking you,

Yours faithfully,

Sd/-

(Shehla Rahman)"

11. Unfortunately, the ROC by letter dated 13.03.2015 refused to take action on the company holding that the allegations in the letter addressed to the ROC did not fall within its domain and as such, they advised the petitioner to approach the appropriate forum.

12. The petitioner was shocked on receiving such a letter from the ROC, N.E., Region, Shillong and, therefore, she wrote a detailed letter giving minute details of every allegation together with the facts supporting such allegations requesting the ROC to initiate action against the purported Directors and the other associates and also to provide necessary relief to her.

13. Unfortunately, such action did not evoke any response from the authority concerned for which the petitioner had to approach this Bench seeking the reliefs incorporated in the petition.

14. I have considered the submissions advanced by Mr S. Dutta, learned Advocate for the petitioner having regard to the averments made in the petition and document attached therewith and find reason to issue notice to the respondents to show cause as to why the reliefs sought for should not be granted as prayed for.

15. The respondents are to submit their affidavit-in-opposition within three days from today supplying simultaneously copy thereof to the petitioner. The petitioner, if so advised, may submit rejoinder within two weeks therefrom supplying simultaneously copy thereof to the respondents and the respondents, if so desire, may file sur rejoinder supplying simultaneously copy thereof to the petitioner.

16. Steps to be taken within five days from today. The petitioner is directed to file an affidavit as well stating that all the directions rendered in this order have been complied with. Such affidavit shall be filed within 7 days from today.

17. List this matter on 01.11.2018.

Sdf

Member (Judicial)  
National Company Law Tribunal,  
Guwahati Bench,  
Guwahati.

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