

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

I.A. No.117 of 2019 in
C.P. No.71 of 2015 (T.P. No.79 of 2016)
U/s 235, 397, 398, 402, 403, 111A, 111 of
the Companies Act, 1956 and
Section 59 of the Companies Act, 2013

In the matter of:

1. Shri S. Jayavikram
15-13-716, SCS, Shivbagh,
Opp. Canara Bank, Kadri,
Mangalore – 575 002.

2. Mrs. Leilamani S.
Venkappa Gardens, Kadri,
Mangalore – 575 002.

3. Mrs. Kshemavathi
Opp. Sundari Apartments,
Shivbagh, Kadri,
Mangalore – 575 002.

- Applicants/Petitioners

Versus

1. M/s. Sorake Chandra Shekar Hospitals P. Ltd.
TS No.374, Upper Bendoor,
Mangalore – 575 002. & 6 others

- Respondents

8. Dr. Suchitra K. Rao
Flat No.703, Acropolis Apartments,
Light House Hill Road,
Mangalore – 575 001.

- Proposed Respondent No.8

Date of Order: 26th March, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Applicants : Shri K.V. Dhananjay and Shri Pawan Shyam

For the Respondents : Shri A. Murali and Shri Abhijit Atur,
Shri Andre Peter

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.117 of 2019 in C.P. No.71 of 2015 (T.P. No.79 of 2016) is filed by Shri S. Jayavikram and two others ('Applicants') under Sections 235, 397, 398, 402, 403, 111A, 111 of the Companies Act, 1956 and Section 59 of the Companies Act, 2013 against M/s. Sorake Chandra Shekar Hospitals Private Limited and others ('Respondents'), by inter alia, seeking to pass an order to implead Dr. Suchitra Rao as Respondent No.8; declare that the transfer of 7,220 shares effected in favour of 2nd Respondent from Dr. Suchitra Rao (the erstwhile Petitioner No.2) in the Board Meeting held on 29.12.2017 as null and void since the same is not in consonance with the Articles of Association of the Company, etc

2. Brief facts of the case, as mentioned in the Application, are as follows:

- 1) The 1st Respondent Company has been incorporated under the name and style of M/s. Sorake Chandra Shekar Hospitals Private Limited on 17.02.1987 with the Registrar of Companies, Karnataka. The Registered Office of the Company is situated at TS No.374-5, Upper Bendoor, Mangalore-575 002. The present Authorised Capital of the Company is Rs.2,00,00,000/- (Rupees Two Crores Only) divided into 2,00,000 Equity Shares of Rs.100/- each. The present issued, subscribed and paid-up capital of the Company is Rs.57,10,00,000/- (Rupees Fifty Seven Lakhs Ten Thousand Only) divided into 57,100 Equity Shares of Rs.100/-

each. The main object of the Company is to carry on the business of running hospitals, nursing home, health centres with all facilities and conveniences. The Company is presently engaged in the business of running Hospital at Mangalore, Karnataka, India with all the facilities and conveniences.

- 2) It is stated that both the 5th & 6th Respondents respectively died during the pendency of this proceeding and an application for impleading legal representatives of Respondent No.5 has been filed vide a separate application.
- 3) The proposed Respondent No.8, Dr. Suchitra K. Rao is one of four Directors of the Company. However, Dr.Suchitra Rao has resigned her directorship vide letter of resignation dated 15th December, 2017 , and the same was accepted and also transferred her 7,220 Equity Shares to Respondent No.2 and the same was approved during the Board meeting held on 29.12.2017. Since transfer of shares of the Company being resorted to by the Respondents, in order to dilute the shareholding of petitioner, and it being one of the issues raised in the main Company petition, it is necessary to implead the said Dr. Suchitra Rao and challenging the transfer of shares to the R-2 on 29.12.2017 in this application. The said transfer can be attributed to majority shareholding of Respondent No.2 and his dominant position as a Managing Director in the R-1 Company. It is alleged that it ipso facto be illegal. The Petitioners have alleged a series of oppressive acts by R-2 which have helped the R-2 to acquire equity shares from existing shareholders of the Company viz. Dr.Suchitra Rao, and it is violating the spirit of articles of association and the quasi-partnership nature of business. By virtue of this transfer, the Respondent No.2's shareholding in the R-1 Company increased from 20% to 78%.




3. Heard Shri K.V. Dhananjay, learned Counsel for the Petitioner and Shri A. Murali, and learned Counsel for the Respondents. We have carefully perused the pleadings of the parties and the extant provisions of law.
4. Shri K.V. Dhananjay, learned Counsel for the Applicants/ Petitioners, while pointing out various averments made in the main Company petition and in the instant application, has further submitted that R-2 by his dominant position lured Dr. Suchitra K. Rao to transfer her shareholding to him leading to violate to the doctrine of *lis pendens*. Such being the case, this transfer is not permissible in the eyes of the law. Since the issue to be adjudicated in the main petition, it is necessary to formally implead the proposed Respondent and to question the transfer of her shares. Therefore, the learned Counsel for the petitioner urged the Tribunal to allow the application as prayed for in the interest of justice.
5. Shri A. Murali, learned Counsel for the Respondents has opposed the application by inter alia stating that the instant application is not maintainable, and the main petition itself can be up taken for final hearing as he has already filed reply on behalf of the Respondents. The Learned counsel himself submitted on 04.05.2018 by stating that he did not to file any further reply to amended petition in addition to the reply already filed.
6. It is not in dispute that the impugned action takes place, while the main Company Petition is pending. Since the issue of transfer of shares, apart from the other issues are pending, the Respondents have resorted it and thus it is necessary to permit the Applicants to amend and implead the proposed Respondent to the Company petition as prayed for in the interest of justice. The Hon'ble High Court of Karnataka, vide order dated 26.05.2016 passed in Company Appeal No.9/2016, has inter alia

directed to decide the case on merits and dispose of the same as expeditiously as possible inspite of pending of that appeal. Therefore, in order to avoid multiplicity of litigation, it is necessary to allow the instant Company Petition by granting short time to the parties to file additional reply.

7. In the result, I.A. No.117 of 2019 in C.P. No.71 of 2015 (T.P. No.79 of 2016) is disposed of with the following directions:

- 1) The Applicants/Petitioners are permitted to implead Dr. Suchitra Rao as Respondent No.8, and also suitably amend the prayer of the Petition with regard to the impugned transfer of 7220 shares, effected in favor of the 2nd Respondent from Dr. Suchitra Rao (proposed Respondent No.8) as per the Board Meeting held on 29.12.2017.
- 2) The Applicants/Petitioners are directed to serve a copy of the amended Company Petition to all the Respondents including Respondent No.8, within a period of one week from the date of receipt of the copy of the order.
- 3) The Respondent No.1 to 7 are at liberty to file additional reply, and the proposed Respondent No.8 is also granted liberty to file her reply, within a period of two weeks from the date of receipt of copy amended Company the Petition.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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

I.A. No.118 of 2019 in
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U/s 235, 397, 398, 402, 403, 111A, 111 of
the Companies Act, 1956 and
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- Applicants/Petitioners

Versus

1. M/s. Sorake Chandra Shekar Hospitals P. Ltd.
TS No.374, Upper Bendoor,
Mangalore – 575 002. & 6 others

- Respondents

8. Shri Somshekar Amin
Shri Rajesh Amin
Shri Naresh Amin
Ms. Shamitha

- Proposed Respondent No.5(a)
- Proposed Respondent No.5(b)
- Proposed Respondent No.5(c)
- Proposed Respondent No.5(d)

Date of Order: 26th March, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)



Parties/Counsels Present:

For the Petitioners : Shri K.V. Dhananjay and Shri Pawan Shyam

For the Respondents : Shri A. Murali and Shri Abhijit Atur,
Shri Andre Peter

ORDER


Per: Rajeswara Rao Vittanala, Member (J)


1. I.A. No.118 of 2019 in C.P. No.71 of 2015 (T.P. No.79 of 2016) is filed by Shri S. Jayavikram and two others (Applicants) under Sections 235, 397, 398, 402, 403, 111A, 111 of the Companies Act, 1956 and Section 59 of the Companies Act, 2013 against M/s. Sorake Chandra Shekar Hospitals Private Limited and others ('Respondents'), by inter alia, seeking to pass an order to implead the legal representatives of Respondent No.5 Late Kasthuri J. Amin viz. Shri Somshekar Amin as Respondent No.5(a), Shri Rajesh Amin as Respondent No.5(b), Shri Naresh Amin as Respondent No.5(c), and Ms. Shamitha as Respondent No.5(d) respectively, etc.
2. Heard Shri K.V. Dhananjay, learned Counsel for the Petitioner and Shri A. Murali, learned Counsel for the Respondent. We have carefully perused the pleadings of the parties and the extant provisions of law.
3. Shri K.V. Dhananjay, learned Counsel for the Petitioners, has inter alia, submitted that the 5th Respondent Late Mrs. Kasthuri J Amin was holding 1,805 (One Thousand Eight Hundred and Five) Equity Shares of Rs.100/- each in the Company. The Respondent No.2 brought her shareholding without the approval of this Hon'ble Board and without offering to other shareholders transferred the shares to himself. The transfer of shares is also challenged in this Petition. Both 5th & 6th Respondents died during the pendency of this proceedings. Respondent No.5 passed away on 20.07.2018. Since the transfer of Respondent

No.2's shares to Respondent No.5 has been challenged in the petition, it is necessary to implead legal heirs of Respondent No. 5.

4. Since the Respondent No.5 died on 20.07.2018 while the Company Petition is pending, it is necessary to permit the Applicant to implead legal heirs of the deceased person in order to give them an opportunity to defend them in the case.
5. Hence, I.A. No.118 of 2019 in C.P. No.71 of 2015 (T.P. No.79 of 2016) is disposed of with the following directions:

- 1) The Applicants/Petitioners are permitted to amend and implead legal heirs of Respondent No.5 Late Mrs. Kasthuri J. Amin viz. Shri Somshekar Amin as Respondent No.5(a), Shri Rajesh Amin as Respondent No.5(b), Shri Naresh Amin as Respondent No.5(c) and Ms.Shamitha as Respondent No.5(d) within a period of one week from the date of receipt of copy of the order, after serving copy of the same to all legal heirs as mentioned above.
- 2) The impleading Respondents are granted two weeks' to file their reply, from the date of receipt of copy of amended Company Petition.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL