

In the National Company Law Tribunal  
Mumbai Bench.

No. CP 32/59,241-242/MB/MAH/2016

Under Section **59, 241-242 of Companies Act, 2013.**

In the matter of

**Ramkrishna Mankari**

Pune-411007

: Petitioner

V/s

**Tuljabhavani Cold Storage Pvt. Ltd. & 4 Ors.**

Pune-413102

: Respondents

Date of Order : 31/08/2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s): : 1. Mr. Manoj H. Shah, Company Secretary.

For the Respondent(s): : 1. Mr. Rahul Chitnis &  
2. Raturaj V. Bankar, Advocates.

**Per M.K. Shrawat, Member (Judicial).**

**ORDER**

1. This Petition has been filed on 29.09.2016 by the Petitioner Mr. Ramkrishna Mankari (Director and Majority Shareholder of the Respondent Company) U/s. 59, 241-242, 246, 337 to 341 of the Companies Act, 2013 against the Corporate Debtor **(i)** M/s. Tuljabhavani Cold Storage Private Limited & Others, CIN: 63022PN2003PTC018082, Registered Office: Krushna Plot No.56, Avdhoot Nagar Baramati, Tal. Baramati, Pune-413102 **(R-1)**; **(ii)** Dhananjay Krishnanath Gaikwad **(R-2)**; **(iii)** Ms. Anita Krishnanath Gaikwad **(R-3)**; **(iv)** Mrs. Varsharani Dhananjay Gaikwad **(R-4)**; all Residents of Baramati, Pune-413102, alleging several acts of oppression/mismanagement by the Respondents.

2. **Brief history** of the case is as given below:-

2.1. The Respondent No.1 Company, M/s. Tuljabhavani Cold Storage Private Limited (TCSPL in short) is a Private Limited Company incorporated as on 30.06.2003.

As per the Memorandum of Association as filed at the time of the incorporation of the

Company, Respondents R-2 and R-3 were the Promoters of the R-1 Company and were holding 25% each of the paid up Equity Share Capital of the Company; balance 50% held by other two Promoters viz. Dhairyasheel Gaikwad and Mr. Sanjay Jadhav, who were holding 25% Equity Shares each in the paid up share capital of the Company.

2.2. Some of the main objects of the R-1 Company as mentioned in the Petition are: To undertake and carry on the business of cold storage & Food Processing, establish, purchase or otherwise acquire, run, conduct and operate a cold storage warehouse, bonded warehouses, for the presentation, storage and treatment of merchandise, food products & farm products. Also to undertake business of ice makers, ice dealers, refrigerating store keepers, makers, dealers of and in freezing and refrigerating agents.

3. The Authorized, Issued, Subscribed and Paid-up capital of the Respondent Company, for the year ended 31.03.2014, as per the Petition, is Rs.5 lakhs, as reproduced below:-

"

Sr. No.	Particulars	No. of equity Shares	Amount per share Rs.	Total Rs.
1	Authorized Capital	50,000	10/-	5,00,000/-

"

"

Sr. No.	Particulars	No. of equity Shares	Amount per share Rs.	Total Rs.
1	Issued, Subscribed and Paid Up Capital	50,000	10/-	5,00,000/-

"

4. Respondent Nos.2, 3 and 4 are the Directors and Shareholders of the Respondent No.1 Company.

5. The Petitioner stated that as per Form No.2, R-1 Company (i.e. TCSPL) as on 20.02.2008 issued and allotted 30,000 equity shares of ₹10/- each to the following persons, reproduced below:-

"

Sr. No.	Name of the allottee	No. of Shares
1	Mr. Dhananjay K Gaikwad Jointly with Mrs. Sheetal D Gaikwad	12000
2	Mr. Dhananjay K Gaikwad Jointly with Mrs. Varsha D Gaikwad	12000
3	Ms. Anika G Gaikwad	6000
	Total	30,000

"

5.1. To stream line the facts it is informed that as on 20.02.2008 the issued, subscribed and paid up capital of the R-1 Company was as follows:-

"

Sr. No.	Particulars	No. of equity Shares	Amount per share Rs.	Total Rs.
1	Authorized Capital	50000	10/-	5,00,000/-
2	Issued Subscribed and Paid Up capital	50000	10/-	5,00,000/-

"

5.2. The Petitioner has thus demonstrated that there was no change as on the date of filing of filing of the Petition in the Authorised, Issued, Subscribed and Paid-up capital of the Respondent Company.

6. The Petitioner alleged that **05.01.2013 the Respondent No.2 was in dire need of Funds**, therefore, approached the Petitioner for helping him by way of investment in the equity shares of R-1 Company. R-2 Mr. Dhananjay Krishnanath Gaikwad has also expressed his willingness and urgent desire to offload and sell equity shares owned and belonged to him and his family members, representing majority equity holding in the R-1 Company to the Petitioner. R-2 reiterated to the Petitioner his urgent financial crunch and persuaded the Petitioner to purchase the majority holding of equity shares of himself and other Respondents in the Respondent No.1 Company at a huge premium, as decided by the Respondents.

7. The Petitioner further stated that he was convinced of the bright future of the project of the R.1 Company (TCSPL) as projected by R-2 and on being further assured and convinced by the R.2 that the majority stake by way of 25,500 equity shares representing 51% Equity Shares of the Respondent No.1 Company would be transferred to the Petitioner. The Petitioner had, therefore, **purchased 25,500 equity shares representing 51% Equity shares of the Capital of the R.1 Company, from R-2 and R-4 at ₹275/- per equity share (i.e. ₹10/- face value + premium of ₹265/- per share)**. Petitioner was further assured by the Respondents that all the legal documents would be executed for the transfer of the majority holding of equity shares in the R.1 Company to the Petitioner and all the legal and Company Law compliances would

be made by the Respondents so as to ensure that the petitioner becomes the majority shareholder and owner of the Company as per the equity shares as transferred in favour of the Petitioner.

7.1. The R-2 has also tempted the Petitioner that after the date of transfer of 25,500 equity shares to the Petitioner, the Petitioner would be made a **non-retiring Director** on the Board of Directors of the Company and would also have a veto in all the decisions as would be taken by the Board in the operations of the Company. It was further assured that no decision would be taken by the Board of R-1 Company without the knowledge and concurrence of the Petitioner. Further, he would also be made a signatory to all the Bank accounts of the Respondent No.1 Company so that all the financial transactions in the Respondent No.1 Company shall be done with the knowledge of the Petitioner. It is further alleged that R-2 has assured the Petitioner that the current Bankers from whom the R.1 Company took loans and availed financial assistance would be intimated of the following:

- a) the change in the management in the Company and
- b) the transfer of majority stake of 51% shareholding viz. 25500 equity shares of the Company, to the Petitioner.

8. Thereafter, R-2 and R-4 executed the prescribed Share Transfer Forms in favour of the Petitioner for the transfer of 25,500 equity shares which were also executed by the Petitioner as a 'Transferee' and handed over back to the R.2 for further process. Thereupon, R-2 and R-4 convened and held **meeting of the Board of Directors for R-1 Company as on 04.02.2013** and passed the unanimous Board Resolution for the approval of the transfer of 25,500 equity shares of ₹10/- each representing 51% equity shares of R.1 Company as held by R-2 and R-4 (being majority stake of the Respondent No.1 Company) in favour of the Petitioner as follows:-

Name of Transferor	Number of Equity Shares	Share Certificate Number	Distinctive Numbers	Name of Transferee
Mrs. Varsha D. Gaikwad	2500	3	5001-7500	Mr. Ramakrishna Mankari
Mr. Dhananjay Gaikwad	2500	1	1-2500	Mr. Ramakrishna Mankari
Mr. Dhananjay Gaikwad	4500	5	10001-14500	Mr. Ramakrishna Mankari
Mr. Dhananjay Gaikwad	2000	6	14501-16500	Mr. Ramakrishna Mankari
Mr. Dhananjay Gaikwad	2000	7	16501-18500	Mr. Ramakrishna Mankari
Mr. Dhananjay Gaikwad	1000	10	2501-3500	Mr. Ramakrishna Mankari
Mr. Dhananjay Gaikwad	1000	12	4001-5000	Mr. Ramakrishna Mankari
Mr. Dhananjay Gaikwad	4000	16	20001-24000	Mr. Ramakrishna Mankari
Mr. Dhananjay Gaikwad	6000	20	38001-44000	Mr. Ramakrishna Mankari
Total	25500			

8.1. The **Minutes** of the Board of Directors Meeting dated **04.02.2013** resolved as under:-

*"RESOLVED THAT, Mr. RAMKRISHNA MANKARI be and is hereby appointed as additional Director of the Company to hold office till the conclusion of next Annual General Meeting".*

The Minutes of the meeting were also stated to have duly got notarized by the Respondents. After receipt of the transferred shares certificates in his favour, the Petitioner believed that he became the owner of the equity shares in the Respondent No.1 Company and that he held 25,500 equity shares in the Company.

8.2. It is further alleged that R-2 and R-4 also assured the Petitioner that the Petitioner would be made as a 'Non-retiring Director' on the Board of Directors of the R.1 Company and be designated as a 'Promoter' of the Company. He was further assured that necessary legal compliances would be done in due course.

9. In consideration of the transferred 25,500 equity shares @ ₹275/- per share as mentioned *supra* paid **₹70 lakh to R.2 and R.4**, as follows:-

a) Mr. Dhananjay K Gaikwad (Respondent No. 2) – ₹ 63,13,725/-

b) Mrs. Varsha D Gaikwad (Respondent No. 4) – ₹ 6,86,275/-

Total = **₹ 70,00,000/-**

The Petitioner has stated that the said payments for consideration as made by the Petitioner have been received and encashed by the Respondent Nos.2 and 4 being the 'Transferors' of Equity Shares.

10. The Petitioner further alleged that the Resolution for transfer of 25,500 equity shares representing 51% was passed by the Board of Directors of the Company in the meeting held on **04.02.2013** and R-2 to R-4 handed over the duly signed and endorsed equity Share Certificates to the Petitioner after effecting the transfer of equity shares in favour of the Petitioner for all the 25,500 equity shares. **The Respondents also allegedly assured the Petitioner that the Register of Members and the Register of Transfers as maintained by the Company were updated and the necessary entries had been made in all the Registers as required under the provisions of the Law.** The Respondents also stated to have assured the Petitioner that **all the events have been properly recorded in the records including the Minutes Books of the Company and the Petitioner became a majority shareholder of the Company and also a Director on the Board of Directors of the Company** after the said date of the Board Meeting wherein Resolutions for approval of Transfer of Shares and appointment of Petitioner as Director was passed. However, the Petitioner realized that quote, ***"The fact in reality was that the events as done by the promoters/Directors of the respondent no. 1 Company were never recorded by the respondents in their records, as will be reflected from the events as stated herein after the petitioner has in fact been defrauded by the respondents for the investments as made by him in the equity shares of the Company."*** unquote.

11. According to the Petitioner, the **R-2 requested the Petitioner to extend a loan of ₹20 lakhs** for the affairs of the R-1 Company for meeting the Service Tax liabilities. In good faith, the **Petitioner gave ₹20 lakh as Loan on to R-2 on 31.12.2013** with a clear understanding that the amount would be repaid in two months' time by R-2. However, it is alleged that the said Loan was **repaid only on 07.08.2015** after persistent follow up by the Petitioner with a delay of 1-1/2 years from the due date.

12. The Petitioner further stated that R-2 allegedly filed the Balance Sheet and Annual Return of the R-1 Company for the year ended 31.3.2013 with RoC without the true picture of shareholding of R-1 Company where the name of the Petitioner was intentionally and deliberately not reflected in the said documents or Returns filed by the Respondents. Petitioner was not aware of the fake and false documents filed by the Respondents with the RoC. Petitioner came to know about it only in the year 2016 when he made a search in the Ministry of Corporate Affairs (MCA) website.

13. The Petitioner specifically drawn the attention of this Bench that the Financial Statements and the Annual Return of the Respondent No.1 Company were although prepared by R-2 to R-4 **after the date of the investments as made by the Petitioner** in the Company by way of acquisition of shares, but got the shock of his life that his majority stake was not reflected for the Financial Years 2012-13 & 2013-14. It was noticed that the transaction of transfer of 25500 shares not reflected in financial statements for the financial year 2012-13. Documents as submitted by the Respondents have not disclosed the name of the Petitioner as a Director as decided vide a Board Meeting dated 4/2/2013. Similarly, the Petitioner alleged that **"No Notice of the annual general meeting as required under the provisions of Section 172 of the Company's Act, 1956 was issued to the Petitioner in spite of being a majority shareholder of the Company". Allegedly a meeting was held on 30/09/2014 but it was conducted without the knowledge of the Petitioner.**

14. The Petitioner seriously relied upon the provisions of Section 628 of the Companies Act, 1956 and Section 448 read with Section 447 of the Companies Act, 2013 relating to 'Punishment' for wilful concealment of material information in the mandatory documents and wrong reporting of Financials of any Company. According to the Petitioner, the Respondents are liable under the provisions of Sections 447, 448 along with other provisions of fraud under the Companies Act, 2013. The said act of misrepresentations, is a continuing act of **"oppression"** on the Petitioner and a clear case of **"mismanagement"** of the affairs of the Company.

14.1. The Petitioner further alleged following serious charges that the Respondents have committed:

- a) *The Company has Not maintained the Fixed Assets Register*
- b) *The Company has Given Loan of Rs. 30 Lakhs to related parties of the directors .*
- c) *The Company has Taken loans from members/ relatives which are in violation of the provisions of the act , which are from borrowed funds.*
- d) *The Company does not have an internal audit system.*
- e) *The Company has defaulted in repayment of statutory dues.*
- f) *The Company has defaulted in repayment of dues of Financial institutions."*

15. The Prayers of relief of the Petitioner are running in several pages, however, reproduced below only those Prayers which were pressed for Adjudication as under:-

"A. FINAL PRAYERS

- i. To maintain this petition
- ii. Declare all resolutions passed in the Board Meetings/shareholders meetings in the absence of and without the written consent of the Petitioner to be void and of no effect.
- iii. To annul and declare the annual general meeting as held for the financial year 2013 as void and reconvene the said annual general meeting in the presence of the petitioner.
- iv. To annul and declare the annual general meeting as held for the financial year 2013 as void and reconvene the said annual general meeting in the presence of the Petitioner.
- v. To update the Register of Members i.e. MGT-1 by including the name of the petitioner as a member / majority shareholder of the Company and produce the same for inspection.
- vi. ...
- vii. ...
- viii. To debar disqualify the Respondent no.2 to Respondent no.4 from holding the post of Directorship in the Company and to cancel their Director identification number.
- ix. To instruct the Respondent no. 2 to Respondent no. 4 to hand over the possession of all the assets of the Company to the petitioner.
- x. ...
- xi. Order of Injunction against sale/ disposal of the undertaking/ moveable or immovable property (s) /plant & machineries/ any development rights in relation thereto by way of sale/ lease/ lien/ mortgage etc without prior written permission of this Hon'ble Bench and further be restrained from creating any kind of Third party interest by way of joint ventures, collaborations including mergers, amalgamations, reconstruction or restructuring of the Respondent No. 1 and/ or part with possession thereof/ or grant any licence for use and

enjoyment thereof in any manner whatsoever in favour of any person (s) / Companies, unless approved by the majority shareholders of the Company.

- xii. ...
- xiii. ...
- xiv. ...
- xv. A Local Commissioner be appointed to seize, sign and keep in custody of all original minutes book of the Board and General Meetings, Attendance Registers of Directors & Members, all Statutory Records, share Transfer Forms and related correspondence with the Shareholders, etc. of the Respondent No. 1 Company.
- xvi. ...
- xvii. ...
- xviii. ...
- xix. ...
- xx. Order of Injunction against the Transfer of any Shares by the Respondents."

16. Several opportunities were given to the Respondent to represent his side. Although Learned Representatives of the Respondent attended the hearings on few dates of hearing, no written submissions explaining the side of the Petitioner ever been filed before this Bench. This case is <sup>being</sup> listed continuously since 14.10.2016 and on that occasion on mentioning the Petition, the Respondent had asked time to file a reply. On that day, the Bench had directed the Respondent to file a reply within 3 weeks, Rejoinder if any within 3 weeks. On 24.01.2017, one of the Directors of the Respondent Company Mr. Dhananjay Gaikwad was present and stated in the Court that he was ready for 'out of Court settlement'. It was directed to place on record "Agreement of Settlement". On 10.03.2017 it was noticed that the Learned Representatives of both the sides have made genuine efforts to get the issue settled amongst the parties. A Settlement Agreement was exchanged and parties were directed to adhere to the Terms of the agreed clauses of the Settlement. On 07.04.2017 when the matter was listed for hearing, it was recorded that as per the mutual settlement a payment of ₹1.33 Crores was to be made by R-2 to the Petitioner. An undertaking was given that the payment should be made positively by 30.04.2017. The Director Mr. Dhananjay Gaikwad was present in the Court. The matter was again listed on 01.05.2017 and it was recorded that Two Post-dated Cheques respectively of ₹69,86,275/- dated 07.06.2017 and one more Cheque of ₹63,13,725/- dated 20.05.2017 were handed over to the Petitioner. It was recorded that let those

Cheques be first encashed and thereafter only Share Transfer Applications would be signed. On 19.06.2017 it was recorded that unfortunately those Cheques were returned by the Bank of the Petitioner with the remark "Insufficient Funds". Mr. Dhananjay Gaikwad, Director informed that due to certain technical reasons, the Funds from Maharashtra State Electricity Distribution Company could not be released. However, he had given an Undertaking that Funds should be arranged shortly. Again fresh Cheques were issued of the same amount in favour of the Petitioner with an understanding that those Cheques would be encashed on or before 31.07.2017. Since the Learned Advocates have made sincere efforts to arrive at a mutual settlement, therefore, it was held justifiable to give more opportunity to the Respondent. On 09.08.2017 it was noticed that the Respondent had not complied with the directions. However, it was informed that the Respondent was hopeful to get Refund from MSEDG, therefore, by recording an Undertaking from the side of the Respondent, one more opportunity was granted subject to a cost of ₹10,000/- imposed on the Respondent. The Respondent was directed to tender fresh Cheques on or before 15.08.2017 to the Petitioner. On 15.09.2017, there was no progress hence the Petitioner has vehemently stated to list this matter for final hearing, hence listed for final hearing on 08.11.2017. On the said date an evidence was relied upon according to which MSEDG had acknowledged the Refund to the Respondent, therefore, again the matter was adjourned to 04.12.2017, however, directed to make the payment by 30.11.2017. Total non-compliance of the Respondent, hence a cost of ₹15,000/- was imposed and the matter was adjourned to 11.01.2018. Again it was recorded that there was a non-compliance of directions and non-compliance of payment Due hence again a cost of ₹10,000/- was imposed. It was recorded that the **right to file a reply by the Respondent stood forfeited**. It was also recorded that there was no apparent possibility of amicable settlement therefore again listed for final hearing on 23.02.2018. The Respondent had challenged a previous Order dated 11.02.2018 before the Hon'ble NCLAT and due to that reason, matter was adjourned to 21.03.2018. On 21.03.2018 again adjourned awaiting Hon'ble NCLAT Order. Placed on record an Order of Hon'ble NCLAT (Company Appeal (AT) No.58 of 2018) dated 09.03.2018 the Order of

the NCLT was affirmed and the Appeal was Dismissed, filed by Dhananjay Gaikwad, Respondent. Few more opportunities were given but neither the Respondent filed any reply nor properly attended the hearing and also failed to comply the terms of Settlement hence listed the case for final hearing on 18.06.2018. On that day, heard both the parties, hearing was completed and Reserved for Orders.

17. Heard both the sides. At the outset it is worth to record that admittedly the Respondents have not filed any reply although number of opportunities were granted. Even during the hearing no serious objection has been raised from the side of the Respondent against the allegations made by the Petitioner. As a matter of fact, it is an open and shut case qua the Respondent because the Petitioner has not only raised the objections but those objections stood corroborated by documentary evidences.

17.1. The Petitioner had made an investment of ₹70 Lakhs towards purchase of 25500 shares belonging to Dhananjay K Gaikwad (R-2) and Mrs. Varsha D Gaikwad (R-4). There is no denial of this fact from the side of the Respondent. On the assurances of Respondent No.2, the impugned investment was made by the Petitioner, but later on it had revealed on enquiry that the promises made of transfer of shares and appointment of the Petitioner as Director had not been fulfilled. In addition to the said mistrust, the Respondents have never intimated through Notice the Board Meeting due to which the Petitioner was kept in dark about the day-to-day functioning of the Company. Even when it had come to the notice of the Petitioner, the Respondents have not invited the Petitioner to take over the charge as Director and, being a majority shareholder, not inviting him to start controlling the management of the Company. The bona fides of the Respondent No.2 and Others have seriously been put under doubt. On one hand under the pretext of transferring the shares substantial money was received, but on the other hand allegedly defrauded the Petitioner by not transferring the shares in his name. Hence a direction in this regard is required to be made in this Order to safeguard the interest of the Petitioner.

17.2. Facts of the case have further revealed that the meetings of the Company were convened but the Petitioner was not informed. In this regard as well, a direction is

required so that the affairs of the Company can be managed efficiently as also within the legal framework.

17.3. The verdict as also the directions are as follows:-

a) Considering the totality of the facts and circumstances of the case as discussed hereinabove it is hereby held that the rights of the Petitioner have been "oppressed" by not transferring shares in his name as well as not appointing him as a Director. Further, the Petitioner's rights have also been "oppressed" by not inviting him in the meetings, either Board Meeting or General Meeting.

b) Considering the totality of the facts and circumstances of the case it is hereby held that the affairs of the Company have been "mismanaged" because of non-maintenance as well as wrong-maintenance of the Accounts of the Company. It is a fit case of "Mismanagement" of the affairs of the Company because of mis-utilization of Funds.

c) That any meeting held after 04.02.2013, the Board meeting in which the Petitioner was appointed as Additional Director, is hereby held as void because of the absence of the Petitioner.

d) That the Balance Sheet drawn as on 31<sup>st</sup> March, 2013 and the Annexures attached therewith are to be rectified because of wrong list of Shareholders of the Company and non-inclusion of the Petitioner in the Shareholding list.

e) That it is hereby directed to rectify the "Register of Members" by including the name of the Petitioner and also directed to submit to the records of RoC.

f) That the Respondents shall execute the Share Transfer Form in favour of the Petitioner as well as complete all other legal formalities for Transfer of Share Certificates in the name of the Petitioner.

g) That the Petitioner be appointed as Director by passing requisite Resolution and also directed to update the Register of Directors as prescribed under the provisions of the Companies Act.

h) That the Respondents No.2 to Respondent No.4 shall cooperate with the Petitioner in the management of the Company and in case of creating any hurdle be declared as disqualified to be a Director of the Company.

i) That the Respondents shall prepare an inventory of all the Assets and Liabilities of the Company with the help of a Chartered Accountant and to be placed before the Board of Directors on the very next meeting directed to be held within one month of the date of this Order.

j) That the Respondents 2 to 4 are hereby forbidden to deal in any manner the movable or immovable assets of the Company and also restrained from creating any Third party interest without obtaining approval through proper Resolution of the Shareholders as well as the Directors of the Company.

k) That the Respondents shall not transfer in any manner their shareholding without obtaining a consent in writing of the Petitioner as well as without obtaining approval from the Shareholders/ Directors.

l) That the newly constituted Board shall make all compliances prescribed under the provisions of the Companies Act as also prescribed under any other Act within 6 months from the date of this Order.

m) That in case of any stalemate in convening the meetings, the matter be reported to NCLT so that an independent Director or Administrator be appointed for supervision of the affairs of the Company.

18. The Petition is disposed of in the light of the above directions. Respondent No.2 shall bear the cost of litigation of the Petitioner by making a payment of ₹50,000/- within one month from the date of this Order. Case file be consigned to records.

Date : 31/08/2018  
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SD/-  
**(M.K. SHRAWAT)**  
**Member (Judicial)**