

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI**

C.A.No.54/C-III// (ND)/2018

Section: Application Under Section 244 of the Companies Act, 2013.

In the matter of:

**1 Mr. Vishwanath Bathla,
9-A, Shivlok Colony Western Kutchery Road,
Meerut,
Uttar Pradesh.**

.....Petitioner

VERSUS

**1. Mr. Sarthak Madhur Publications Pvt. Ltd.
B-34, Madhuban, Ground Floor,
Delhi-92.**

**2. Mr. Prakash Chand Bathla,
"Basera", Main Road,
Dwarikapuri,
Muzaffarnagar,
Uttar Pradesh-251001.**

**3. Mr. Manoj Bathla,
50-A, Saket,,
Opposite Punjab National Bank,
Near-Gole Market,
Meerut, Uttar Pradesh.**

1 | Page

**CA No.54/C-III/ND/2018 Vishwanath Bathla vs. Sarthak
Madhur Publications Pvt. Ltd.& Ors.**

**4. Mrs. Krishna Kumari,
"Basera", Main Road,
Dwarikapuri,
Muzaffarnagar,
Uttar Pradesh-251001.**

**5. Registrar of Companies,
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi-110019.**

.....Respondents

Coram:

**R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)**

**Dr. V.K. SUBBURAJ
Hon'ble Member (Technical)**

Counsel for the Petitioners: Mr. R.Chandrachud, Mr.Nitin Thukral, Mr.
Karan Sharma, Advocates

Counsel for the Respondent: Mr. Sanchit Garga, Advocate

Delivered on: 04.09.2018

ORDER

2 | Page

**CA No.54/C-III/ND/2018 Vishwanath Bathla vs. Sarthak
Madhur Publications Pvt. Ltd.& Ors.**



1. The applicant herein has filed the main company petition under the provisions of Section 241 of the Companies Act, 2013 alleging acts of oppression and mismanagement against the respondents. The main contention of the petitioner in the main CP is that his share holding of 25% had been reduced to 'nil' due to the oppressive act of the respondents as well as other allegations against the respondents made in the main CP. In view of the reduction of his share holding strength from 25% to nil percentage in the first respondent company, this application it is stated has been filed under Section 244 of the Companies Act, 2013 seeking to waive the eligibility requirement under Section 244(1)(a) and (b) of the Companies Act, 2013 in terms of the proviso contained therein for filing the petition under Section 241 of the Companies Act, 2013 and to pass any other order as this Tribunal may deem fit and appropriate under the fact and circumstances of the case.
2. In support of the allegation i.e. share holding strength has been reduced to 'nil' or zero as compared to the share holding held by the petitioner of 2500 shares along with the respondents impleaded in the main CP as



respondent No.3 holding 25% of the shares and the remaining 50% of the shares being held by their father being respondent 2 in the main CP. It is also stated in the application that the company was incorporated on 13.4.2005 with the above noted share holding strength to the account of the petitioner as stated earlier of 2500 shares, to the account of the second respondent being the father 5000 shares and to the account of the respondent No.3, being the brother of the petitioner, 2500 shares. Thus, in all the subscribed and paid up capital was to the extent of 10000 equity shares.

3. In the application, it is further stated that in relation to the other family owned companies to which a list has been given at page 4 of the application that petitions in relation to acts of oppression and mismanagement are pending and that one of the said petitions has been listed before this Bench of the Tribunal and as well as other Benches situated in New Delhi and in relation to one of the petitions, the same is pending before NCLT, Allahabad Bench. The petitioner also alleges that even though he is a part of the Board and also a member of the first respondent company however without his knowledge, the 3rd respondent

has managed to increase the share holding strength of respondent No.2 from 5000 shares to 4,20,000 shares and has also issued fresh shares of 3,40,000 Nos. to the mother of the petitioner arrayed as respondent No.4 in the main CP. By virtue of the above allotments made without the knowledge of the petitioner his share holding strength has been brought down from 25% to 0.33% and the petitioner avers in the application that one of the reliefs sought for in the main CP is to set aside these allotments done based on fabrication and forgery. As already stated the share holding strength of 0.33% has been again brought down, without the knowledge of the petitioner and his consent, and based on forgery and fabrication of documents, to 'nil' share holding by transfer of 2500 shares held by the petitioner which has also been challenged in the main CP. Since all the above allegations in relation to the share allotment and share transfer which has deprived the petitioner of his share holding in the first respondent company by illegal and unlawful means and all these allegations and averments pertaining to the transfer of 2500 shares, shares held by the petitioner and allotment of shares to respondent No.2 and 3 is being assailed which are intrinsic in relation to the petition, it is submitted



on the part of the petitioner that this waiver application should be allowed in order to proceed with the main CP, as otherwise the actions of the respondents being per se oppressive will go unchallenged and will also give an unfair advantage in relation to other proceedings pending before this, as well as other Benches of the Tribunal in relation to other CPs.

4. Non-applicants/Respondents were permitted to file their reply to the above said application filed by the applicant/petitioner seeking for waiver under Section 244 of the Act. Respondent No.3 has taken a contention that even though as per the averments of the petitioner, the petitioner presently hold zero per cent of the share capital of the respondent company and in the circumstances he cannot be considered as a member as defined under Section 2(55) of the Companies Act, 2013. Further, the respondents have sought to rely on the judgment of Hon'ble NCLAT delivered in Company Appeals No.133 and 139 of 2017 in the matter of Cyrus Investment Pvt. Ltd. and Anr. Vs.Tata Sons Ltd. and Ors. and particularly the factors which are required to be noticed by this Tribunal in order to consider the application for waiver.

5. It is further contended in the reply of respondent No.3 that the transfer of share holding of the petitioner took place in the year 2014 itself and the petitioner being part of the Board since incorporation was well aware of the share transfer and that after a period of 4 years, the petitioner/applicant cannot contend that his share holding strength has been reduced by way of transfer. It is also contended in the reply that the allotments made to respondent No.2 and 4 being their parents and the increase being substantially in any case, the share holding strength of the petitioner came down to 0.33% and that the transfer of shares only took place subsequently of the petitioner and in any case is inconsequential. Thus taking into consideration the facts as well the position of law and also in view of alternative remedy available taking into consideration Section 58 / 59 of the Companies Act, 2013, seeking for waiver under Section 244 of the Companies Act, 2013 it is contended is not maintainable and thus taking into consideration the contention of the reply, the respondents have stated that the application is liable to be dismissed with cost.

6. A rejoinder has also been filed by the applicant/petitioner wherein it is brought to the notice of this Tribunal that respondent No.3 has gained to himself and to his family members, the allotments made to parents of respondent No.2 and 4 by making use of their old age to execute a memorandum of gift in favour of family members of R-3. It is also brought forth in the rejoinder that no document whatsoever has been produced in relation to the minutes of the Board meeting in which the allotment of shares and transfer of Petitioner's share has been approved nor any notice of the Board Meeting has also been given in relation to the alleged and illegal allotment or illegal transfer of shares and taking into consideration all these aspects the petitioner reiterates that the application should be allowed in order to enable the Tribunal to consider the main CP itself on merits.
7. At the time of oral submissions, Ld. Counsel appearing for the Applicant/petitioner apart from reiterating what has been stated in the application as well as in the rejoinder, seeks to rely on the decision of the Hon'ble High Court of Karnataka at Bangalore dated 12th August, 2009 rendered in the matter of Vijayan Rajes and Anr. Vs. MSP Plantations Pvt.



Ltd. and Ors. wherein the question of a member whose membership was deprived by the acts of the respondent and where the petitioner constitute the requisite number or the requisite share holding strength as prescribed under proviso of Section 399 of the erstwhile Companies Act, 1956. Taking into consideration the ratio in the above judgement, Ld. Counsel for the petitioner/Applicant submits that it should be in favour of the Applicant held as the question arising before this Tribunal is similar to the one which was answered by the Hon'ble High Court of Karnataka in the decision referred to above.

8. We have carefully considered the rival pleas as between the parties. There is no dispute that the petitioner continues to be Director in the Company and that during the time when the allotment to respondents No. 2 and 4 were made as well as at the time when the transfer is alleged to have taken place from petitioner to respondent No.3 he had been a Director of the first respondent company. Necessarily in order to prima facie defeat the claim of the petitioner that he is not a member in the company, the

respondents in order to convince this Tribunal, apart from merely stating in the reply that the petitioner is not a member, should have produced minutes of the Board meeting wherein the allotment and/or transfer had taken place, the attendance register evidencing the attendance of petitioner in the said meetings as well as the share transfer form together with share certificate along with the reply which had been filed by the respondents. However from a perusal of the reply and documents filed along with the reply it is seen that a contention has been taken by the respondents at paragraph No.4 of the reply, which is to the following effect:

.....Each and every Board Meeting of the company has been duly notified to all the stake holders and each and every act regarding the affairs of the company has been done with the consent and in the present of the petitioner. Moreover since the share holding has been increased in favour of respondent number 2 & 4 who are the parents of the petitioner as well as the respondent; number 3, there was absolutely no objection to the petitioner with regard to the increase in the share holding. It is absolutely and vehemently denied that the act of increasing the share holding of the respondent number 2 & 4 has been done by fabricating or forging

documents. It is pertinent to mention here that the share holding of the petitioner was transferred in favour of respondent number 3 by his own consent and free will. It is also relevant to mention here that the bag containing all the papers, ledger, cash book, minutes book, ROC documents etc. have been lost by the respondent number 3 on 12.02.2018, much prior to the institution of the present petition. True copy of the F.I.R bearing SO Number 430 of 2014 lodged with P.S. Crime Branch, Delhi is annexed herewith and is marked as Annexure-R/2 with this reply.

9. Perusal of the above paragraph strangely makes a statement that all the papers in relation to the first respondent company including minute books and RoC documents have been lost and in the circumstances no record in relation to first respondent company is able to be produced. We are not very much convinced with this explanation given by respondent No.3 for not providing evidence in relation to the share allotment and share transfer and that the above statement will not absolve respondent No.3 from producing any shred of evidence in relation to the share transfer of the holding of the petitioner to himself as well as in relation to allotment of shares to respondent No.2 and 4 which acts prima facie has made the

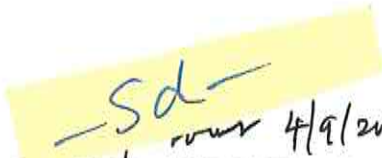
petitioner to fall below the threshold limit of 10% as well as to make him as a non-Member , if the acts of the respondents can be sustained of the first respondent company.

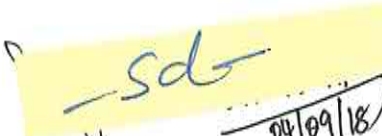
10. In the circumstances, we are of the considered view that in the absence of any proof, the petitioner cannot be shut out under Section 244 of the Companies Act, 2013 on mere statements of the respondents without any shred of evidence being produced to deny an opportunity to the petitioner to prosecute the main CP. Further, it is also required to be seen that respondent No.3 has not contended that the petitioner has never been a shareholder of the first respondent company or that he has been all along holding shares since incorporation only below the threshold limit or that the number of members are in excess of 10. In the circumstances, this application as filed by the applicant/petitioner stands allowed and in terms of proviso to Section 244(1), this Tribunal waives the requirement as specified in clause(a) of sub-section 1 of Section 244 of the Companies Act, 2013 and permits the petitioner to prosecute the main CP.



11. However, the order passed in this application shall not in any way prejudice the case of the respondents in the main C.P. from taking any contentions in relation to share allotment and transfers challenged nor producing from any documents in this regard. Let reply be filed by the respondents within a period of 6 weeks from today in the main C.P. A copy of the reply shall be given in advance to Ld. Counsel for the petitioner and the petitioner shall file its rejoinder within a period of 3 weeks thereafter.

Post the matter for consideration of pleadings and final consideration on 12.11.2018.


over 4/9/2018
(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)


04/09/18
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta
04.09.2018