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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 27.08.2018.

PRESENT: 1.Hon'ble member (J) **Shri Rajeswara Rao vittanala,**
2.Hon'ble member (T) **Dr. Ashok Kumar Mishra**

CP/CA No	Purpose	Section	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP35/07, TP 04/16	For pronouncement of order	Sec 397/398	K.Rajaiah	Sachin Vasudev/ K.V. Satish	Chamundeswari Studios & Lab Pvt .Ltd & 4 Others	Anant M for R1-R4. Venkataramani K. for R-5.

SL. NO.	NAME (IN CAPITAL) & PHONE NUMBER	REPRESENTATION TO WHOM	SIGNATURE
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PETITIONER/s :

K.V. SATISH
8884321353

PETITIONER



RESPONDENT/s: RAJASHREE DEVCHODHURY

for.
Mr. K. VENKATRAMANI
080.41280811

RESPONDENTS
1 to 5



ORDER

Heard Shri K.V Satish, learned Counsel for Petitioner;
Ms. Rajashree Devchoudhury, learned Counsel for Respondents.

C.P is disposed of vide separate order.



MEMBER (T)



MEMBER (J)

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

C.P. No. 35/2007(T.P No. 04/2016)
u/s 397,398,402,403 and 406 of Companies Act, 1956

In the matter of

Late Sri K. Rajaiah,
Since dead by his LRs

(a) Smt. Swarnalatha Rajaiah
W/o Late K. Rajaiah

(b) Mr. Vijay Krishna. R.
S/o. Late K. Rajaiah,
No.1668, 5th Cross, II Block
Banashankari I Stage
Bangalore - 560 050 -

Petitioners

Versus

1. **M/s Chamundesware Studios Laboratory Private Limited,**
No.48, Millers Tank Bund Road,
Bangalore-560052.

2. Smt. Rajalakshmi Sadagopan,
At 1st Floor, No.48, Millers Tank Bund Road,
Bangalore-560052.

3. Shri R. Sadagopan,
At 1st Floor, No.48, Millers Tank Bund Road,
Bangalore-560052.

4. Smt. T. Gayatri alias Gayatri Varadarajan,
At 1st Floor, No.48, Millers Tank Bund Road,
Bangalore-560052.

5. K.K. Foundation and Public Charitable Trust,
No.48, Millers Tank Bund Road,
Bangalore-560052. -

Respondents

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

Date of Order: 27th August, 2018



For the Petitioner(s): Shri K.V Satish, Advocate alongwith Shri B. Karyappa,
Advocate
For the Respondents: Shri K.Venkatramani, Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

- 1) C.P.No.35/2007 (T.P.No.4/16) was initially filed by Sri K.Rajaiah, under Section 397,398,402,403 and 406 of Companies Act, 1956 by inter-alia seeking : to declare the appointment of Respondent Nos.2 to 4 as Directors of the Company as illegal and void ab initio; to declare the transfer of 14,400 shares in aggregate in favour of the Respondent No.2 to 4 and K. K. Foundation and Public Charitable Trust (Respondent No.5) represented by the Respondent No.2 and 3 as illegal and void ab initio etc.
- 2) On the death of Sri. K. Rajaiah on 16.2.2018, the legal heirs of Petitioner namely Smt. Swarnalatha Rajaiah (Wife of the deceased) and Sri. Vijay Krishna. R (Son of the deceased) have filed I.A.80/18 by seeking to come on record. Accordingly, the Tribunal passed an order on 25.6.2018 by permitting the said Legal Representatives (LR's) to come on record. Accordingly the said two LR's have come on record.
- 3) Brief facts of the case, as mentioned in the Company Petition, are as:
 - a. Chamundeshware Studio and Laboratory Private Limited (herein after referred to as "Company") is a Company incorporated on 29.9.1980 with the Registrar of Companies, Karnataka with Registration no.08/3956. Authorised Share capital of the Company as on 31.3.2006 is Rs.40,00,000/- divided into 40,000 equity shares of Rs.100/- each. Issued, subscribed and paid-up capital of

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the Company is Rs.30,00,000/- divided into 30,000 equity shares of Rs.100/-. Out of 30,000 equity shares, Sri. K. Kupuswamy Naidu held 29,999 shares and Sri. K.Rajaiah (Petitioner) held one equity share.

- b. Sri. K. Rajaiah, the Original Petitioner is the Shareholder and Director of the Company. The Company was incorporated by the Petitioner, and his elder brother Sri. K. Kuppuswamy Naidu. Both the brothers are shareholders holding 50% shares(one share each in the Company Sri. Kuppuswamy Naidu, the Managing Director, passed away on 4.3.2007. He was a bachelor, Hindu by religion. As per Hindu Succession Act, 1956, there being no Class I legal heir, Petitioner (Brother of the deceased) is Class II legal heir. Sri. Kuppuswamy Naidu held 29,999 shares and the deceased Petitioner held 1 share. As per the Annual Returns filed by the Company, there has been transfer of shares to the extent of 14,400 equity shares, which are held by Late K. Kuppuswamy Naidu during his lifetime in favour of Respondent No.2 and 4, and also creation of beneficial interest in favour of Late K. Kuppuswamy Naidu and Respondent No.3 and 3 as Trustees of Respondent No.5, which is a Charitable Trust.
- c. It is stated that substantial assets were bequeathed by Late K. Kuppuswamy Naidu to Respondent No. 2, 3 and 4, under a disputed will dated 27.9.2006. The Petitioner has also filed a suit (for injunction to restrain the said persons from dispossessing and interfering with the peaceful possession and enjoyment of schedule property. At the time of executing the will dated 27.9.2006, Late K. Kuppuswamy Naidu was aged 81 years and was suffering



from serious ailments and had become totally bed ridden, and was under the care of nurses, who took care of him round the clock.

- d. The deceased Petitioner is a Ph.D holder in Engineering (Aeronautical Engineering). He retired in the year 1999 as Associate Director. The deceased Petitioner was holding employment in various organizations, his shareholding was not increased and only his brother's shares were increased. Though the deceased Petitioner did not receive any remuneration from the Company, he was involved in the affairs of the Company, and was signatory to financial facilities provided by KFSC, he was also personal guarantor for the financial facilities provided by KFSC. Even now Company has secured loans with KFSC and the deceased Petitioner is a guarantor.
- e. It is stated that Respondent 2 to 4 are not related to Late K. Kuppuswamy Naidu, and by virtue of Caretaker Agreement entered during December, 2002. Respondent 2 was appointed as Caretaker to look after him and to oversee the day to day functioning of the premises situated at No.48/49, Millers Tank Bund Road, Bangalore for a period of six years on a monthly salary of Rs.3,000/-. The Respondent No.3 is the Husband and Respondent No.4 is the daughter. The Respondent No.3 and 4 had otherwise no role to play.
- f. It is stated that the alleged will has been deposited with the District Registrar by Late K. Kuppuswamy Naidu, through Auditor of the Company, Sri. Subramanya Bhat, and it not available as it has been lost or destroyed and it is *sub judice*. Late K. Kuppuswamy Naidu died on

- 4.3.2007 under mysterious circumstances in the early hours. The Petitioner lodged a Police Compliant on 4.3.2007 and requested for proper investigation, accordingly the body was sent to Post-Mortem.
- g. The Petitioner has also got issued a Public Notice in Kannada Daily "Kannada Prabha" and English Daily "The New Indian Express" on 6.3.2007 and Times of India on 8.3.2007 subsequent to the death of Sri. Kuppuswamy Naidu and cautioned the public at large that alleged Will dated 27.9.2006 was not at valid and the appointments of Respondents 2, 3 and 4 as Directors of the Company are illegal. The Petitioner has disputed the alleged will and got issued legal notice to legatees and also to executors. They also stated that the properties both moveable and immoveable left behind by Sri. K. Kuppuswamy Naidu is about 50 to 80 crores. Petitioner and his Son got Rs.1.5 Crores and remaining assets have been bequeathed to Respondent No.2 to 4 and Respondent No.5, a Trust formed by Sri. K. Kuppuswamy Naidu
- h. It is stated that Respondents 2 to 4 are not related to the deceased Naidu and Respondent No. 2 was appointed as caretaker and maid servant/nurse. Under the disputed will Sri. K. Kuppuswamy Naidu has transferred 14400 shares. 8400 equity shares to Smt. Rajalakshmi Sadagopan, 3300 equity shares to Smt. Gayatri Tamizharasan and 2700 equity shares to Sri. K. Kuppuswamy Naidu, Sri. Sadagopan and Smt. S. Rajalakshmi as Trustees of K.K. Foundation and Public Charitable Trust.



- i. It is stated that the deceased Petitioner has not taken part in the Board Meeting approving the transfer of shares of the above persons. And the signature of the petitioner on so called Board meetings are forged one and the Transfer is wholly illegal and against the Articles of the Company and provisions of Companies Act, 1956.
- j. The Respondents are appointed as Directors w.e.f 30.8.2006. The deceased Petitioner was never a party to Board resolution appointing Respondent No.2 to 4 as Directors. There being only 2 Directors, there was no possibility of constituting quorum by Sri. K. uppuswamy Naidu and thus appointment of Respondent Nos.2 to 4 as Directors are illegal. It is alleged that no AGM was held for the year 31.3.2006 and thus question of appointing Respondent Nos. 2 to 4 as Directors do not arise. It is alleged that Respondent No.2 to 4 did not have sufficient funds to pay the consideration for the alleged allotment of shares.
- k. The deceased Petitioner has filed an injunction suit (O.S. No. 25543 of 2007) before the Court of Principal City Civil & Session Judge, Bangalore against the defendants for obtaining the Suit Schedule Property and maintaining the status quo. Another suit bearing O.S. No. 25716/2007 has also been filed before the Court of Principal City Civil & Session Judge, Bangalore seeking to restrain the defendants therein from exercising any kind of right or acts, in pursuant to will dated 27.9.2006. The Respondent No.2 has challenged the order passed in the above suit by way of filing W.P.No.6908 of 2007 and obtained stay order passed in the above suit. Respondents, after obtaining

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stay order on the interim order passed, has illegally transferred the amounts lying in the Bank Account in respect of Sri. K. Kuppuswamy, was transferred to Respondent No.2.

4. The Company Petition is opposed by Respondent No.1 to 5 by filing a Statement of Objections, which was received by Tribunal, on 9.12.2016, by inter-alia contending as follows:

- a) The instant Petition filed, under Section 397, 398, 402 and 403 of Companies Act, 1956, can be filed only by a member of the Company, who holds the requisite number of shares as stipulated, under Section 399 of Companies Act, 1956. Since the Petitioner was holding only one share right from inception of the Company, the Petition itself is not maintainable and it is liable to be dismissed without going into merits of the case. It is filed with the sole intention of taking vendetta against the Respondents in view of the fact that the Petitioner had received a very minor share in the personal property of Sri. K. Kuppuswamy Naidu as compared to that of Respondents.
- b) It is alleged that the Petitioner, being the minority shareholder oppressing the majority shareholder and obstructing the smooth functioning of Respondent No.1 Company. The Petitioner has filed so many frivolous suits in the capacity of Director in various Courts, without obtaining the permission from Board of Directors.
- c) It is stated that the Company was incorporated in the year 1980 with Late. Sri K. Kuppuswamy Naidu, and Petitioner being subscribers to the Memorandum of Association and Articles of Association by subscribing one share each. Both the Petitioner and his brother Late Sri. K. Kuppuswamy Naidu were 1st



Directors of the Respondent No.1 Company. The Petitioner was working as lecturer in IISC at the time of formation of the Company. It is stated that Respondent No.2 has been appointed as Chief Executive Officer at the Board Meeting held on 25th February, 2006. During June, 2006, Late Sri Naidu made an application to with State Financial Corporation Limited by seeking financial assistance and then it has suggested to broad base the strength of Board of Directors of the Company. Accordingly, a notice dated 30th August, 2006 was issued by proposing to convene 27th AGM of Company on 30th September, 2006 at 11.00 AM to consider and adopt P & L Account, to appoint additional Director etc. So the Board of Directors consisting of both the petitioner and Late Sri Naidu was held on 30th September, 2006 appointing Respondent No. 2 to 4 as Directors of the Company. Hence, the petitioner cannot question the appointments having participated in the meeting. Another Board meeting was stated have been held on 23.09.2006 consisting of the two Directors, (brothers) and other three Directors (Respondents), (who are stated to have been appointed on 30.09.2006) interalia has approved the transfer of 8400 equity shares to Respondent No.2, 3300 equity shares to Respondent No.4 and 2700 equity shares to K.K. Foundation and Public Charitable Trust (Respondent No.5) by authorising Sri Naidu to endorse share certificate/Registers accordingly.

- d) It is stated that Late Sri. Kuppuswamy Naidu had executed a will dated 27.9.2006 bequeathing all his moveable and immovable properties to the respondents and also appointed three persons known to him as executors of the will. Therefore, the Respondents sought for dismissing of the present petition.



5. Heard Shri K.V. Satish, Learned Counsel for Petitioner, and Shri K. Venkatramani, Learned Counsel for the Respondents. We have carefully perused all the pleadings of the parties along with all the documents filed in support of them and extant provisions of Companies Act, 1956/2013.

6. Shri K.V. Satish, learned counsel for Petitioner, has further *inter alia* contended as follows:

- a) The Company was founded by 2 brothers, Petitioner and his late brother Sri. K. Kuppuswamy Naidu, who was a bachelor. The Company is a Private Limited Company, having restrictions in Transfer of shares, as per its Articles of Association. Both the brothers were having one share each. The deceased brother's shares were periodically expanded to 29,999 shares. The Petitioner is having only one share and as the only surviving shareholder, has filed this petition U/s 399 of Companies Act, 1956 and corresponding Section 244 of Companies Act, 2013.
- b) The alleged transfer of 14,400 shares is in violation of Articles of Association, which confers a first right of refusal or the Right of Pre-emption to the existing shareholders. The deceased petitioner has not consented to the transfer of shares by Late Sri. Kuppuswamy Naidu to the Respondents. Articles of Association provides for right of first refusal and no notice as mandated under Article 7 has been issued by Late Sri. K. Kuppuswamy Naidu at any point of time. Article 8 of Articles of Association put a pre-condition that consideration of shares at the fair value is to be paid first and only then transfer of shares can be effected. However, there was no



consideration paid by the Respondent No.2 to 5 prior to the alleged transfer of shares, which took place on 23.9.2006.

- c) Similarly, Articles 13 & 14 prohibits any transfer or gift of shares in favour of non-family members. The Respondents, who belong to Tamil speaking Iyengar community, with no martial relationship with the Telugu speaking Baliya Naidu community of the founders. They are strangers to the Company, in terms of Articles 13 & 14 of the Articles of Association.
- d) The Petitioner, has obtained certified copy of Statement of accounts of the Bank account of the deceased K. Kuppuswamy Naidu and also of the Respondents 2 to 4 with Canara Bank, Cunningham Road Branch. On perusal of it , it is revealed that no consideration was paid by Respondent No.2 to 5. A sum of Rs. 8,40,000/- was drawn from Kuppuswamy Naidu's account by Respondent No. 2 (Rs.3,40,000/- on 19.9.2006, rs.2,50,000/- on 23.9.2006 and Rs.2,50,000/- on 28.9.2006. Sri .K. Kuppuswamy Naidu was not keeping good health for a few years before 2006. He had absolutely no knowledge of what signatures were affixed by him and for what purpose. So far as regarding Share Transfer Form on purchase of 2700 shares by Respondent No.5 Trust is concerned, the trust had no money to purchase the shares. As per the Statement of Account of respondent No.5 in Syndicate Bank, Trust had only Rs.10,000/- in its account. Even otherwise, transfer of shares to Respondent No.5 trust either by sale or as gift is in violation of Article 13 & 14. It is also contended that Respondent No.2 and 3 were in dire financial distress as per their sworn statements in P.Misc.831/2000 and P.Misc.322/2001 and the Respondent

No.2 and 3 sought permission to prosecute in *forma pauperis* (as an indigent person). Therefore, the contentions raised by the respondents are totally untenable and baseless and thus impugned transfer of shares has to be set aside.

- e) It is further alleged that, in the year 2006, the Respondents were facing prosecution in cheating case filed in Jammalamadugu Police Station. In order to come out of the case, funds from Sri. Kuppuswamy Naidu was withdrawn and paid.
- f) The share certificates produced by the Respondents do not bear the signature of the petitioner. The Share Certificates No.5,6,7 & 8 dated 23.9.2006 along with other minutes relied upon by the Respondents, have been fabricated and carries no evidentiary value. They have filed table of forged signatures of the deceased MD Late. Sri. K. Kuppuswamy Naidu. It is also contended that the minutes of the meeting for the year 2000 to 2006 has been prepared in the year 2006 only just 5-6 months before the death of Kuppuswamy Naidu during the period, the Respondents have entered into the Company. Therefore, the minutes dated 30.8.2006, 23.9.2006 and 30.9.2006 are to be declared illegal and not admissible under Section 193 and 194 of Companies Act, 1956 and corresponding Section 118 of Companies Act, 2013.
- g) It is alleged that signatures of the Petitioner have abruptly stopped, in any meeting or attendance sheets of Board Meetings or Annual general Meeting after 30.9.2006 in the 140 page minutes Register bound by the Respondents. Petitioner was not aware of the illegalities of the Respondents until the demise of his brother on 4.3.2007, and after filing of Company petition on 30.4.2007. It is further contended that



Respondents are strangers to the Company, and Respondent No.2 has entered a 6 years agreement dated 24.12.2002 with Late Sri Naidu to take care of him on a monthly wage of Rs.3000/-

- h) The learned counsel has also filed I.A. No. 175/2018 to amend the Company Petition by *inter alia* seeking the nomination in respect of 15,599 equity shares by Late Shri. K. Kuppuswamy Naidu in favour of Respondent Nos. 2 to 4 is against the Articles of Association of the Company be held illegal etc. The learned counsel submits that they were not aware of the impugned further allotment of 15,599 equity shares and came to know about the same only through the counter filed by the Respondents to I.A. No. 36/2016 (I.A. filed by Deceased Petitioner). Therefore, they stated that were entitled to amend the Company Petition and entitled to the additional 15,599 equity shares.

7. Shri K. Venkatramani, the learned counsel for Respondent, while reiterating the averments made in the reply, has further *inter alia* contended as follows:

- (a) The instant Petition itself is not maintainable, under Section 397 and Section 399 of Companies Act, 1956, as the deceased petitioner has only one share, which is equivalent to 0.003% of the total paid-up capital of the company since the date of incorporation.
- (b) On the death of the Original Petitioner, the Legal Representative's cannot prosecute the case. They have relied upon the following cases:



1. Hans Peter Kerner vs Collyer India Freight Forwarding (P) Ltd., & others -2009(4)Comp.L.J 358
2. Murat Viniyog Ltd., Vs Bijay Kumar Kajaria; Murat Viniyog Ltd., Vs Ajay Kumar Kajaria- 2011 (165) Comp. Cases 151 Cal
3. Miss. Chandra Pradhanani and others vs M/s. Charles (India) Ltd., and another-2012 (1) KCCR 494 (KAR-DB) (Para 11)
4. S.P.Jain vs Kalinga Tubes Ltd;-AIR 1965 SC 1535
5. Hanuman Prasad Bagri & Ors. Vs Bagress Cereals Pvt Ltd & Ors., -2001(4) SCC 420

(c) The deceased petitioner, instead of raising the issue during the lifetime of Late Shri. K.Kuppuswamy Naidu, has deliberately chosen to raise the issue, after the death of Kuppuswamy Naidu in order to settle a personal score with Respondent No.2-4. The deceased Petitioner did not complain before any Statutory Authorities or initiate any legal action. The deceased petitioner did not disown his signature but has alleged that the signature of Late Sri.Kuppuswamy Naidu has been forged. It is further contended that if the impugned documents are forged as alleged by the petitioner, it is not known as to why the deceased petitioner has remained silent from February 2006 till September 2007, and he could have raised the issues during the lifetime of Late K. Kuppuswamy Naidu. The deceased Petitioner has no locus standi to question the signature of Late K. Kuppuswamy Naidu. All the allegations are made only after the death of K. Kuppuswamy Naidu.

(d) It is contended that during Board Meeting 23.9.2006, the Board of Directors has approved the transfer of 14,400 shares in favour of



Respondents 2, 4 & 5. The Board Meeting also contains the signature of the deceased petitioner, in the attendance register along with Late K. Kuppuswamy Naidu and Respondent No.2-4

(e) It is contended that the dispute as to inheritance of shares is essentially for a Civil Court to decide as held by Sangramsingh P.Gaekwad & Ors. Vs Shantadevi. P.Gaekwad. Therefore, they have sought for dismissal of case.

8. The main points for consideration in case, in the light of original petitioner dies, and his elder brother pre-deceased him, are as follows:-

1. Whether the Company Petition filed by the petitioner is maintainable on the ground that Petitioner was holding one share, and it still can be prosecuted by the legal Representatives of the deceased petitioner:
2. Whether the impugned Board proceedings dated 23.9.2006 wherein the transfer of impugned shares of 14,400 are valid or not?

9. Since the Original petitioner is no more, only relief that can be considered in the present petition is with regard to transfer of 14,400 shares (8400 equity shares to Smt. Rajalakshmi Sadagopan, 3300 equity shares to Smt. Gayatri Tamizharasan and 2700 equity shares to Sri. K. Kuppuswamy Naidu, Sri.Sadagopan and Smt.S.Rajalakshmi as Trustees of K.K. Foundation and Public Charitable Trust)

10. It is not in dispute that the deceased petitioner and Late. Sri. Kuppuswamy Naidu are natural brothers by holding one share each (50% each). Since Late Sri. Kuppuswamy Naidu was suffering from several ailments, Smt. Rajalakshmi was appointed as caretaker to look



after him and to oversee the day to day functioning of the premises situated in No.48/49, Millers Tank Bund Road in the ground floor of which Late Sri. Kuppuswamy Naidu was residing. As per the agreement dated 24th December, 2002 executed between Chamundesware Studio & Laboratory represented by Late Sri. K.Kuppuswamy Naidu and Smt. Rajalakshmi, it was agreed to pay Rs.3000/-per calendar month and the agreement was in operation for a period of six years. It is also mentioned that remuneration shall be paid until the expiry of the six years term and legatee shall pay from Sri. Kuppuswamy's estate after his death until the expiry of the agreement. Accordingly, Smt. Rajalakshmi was given the first floor in the premises, and a room in the Second floor and the ground floor to stay for Smt. Rajalakshmi and her family throughout the period of this agreement.

11. As stated *supra*, Late Sri. K. Kuppuswamy Naidu during his life has suffered various serious ailments resulting him immobilized and was totally dependent on the caretaker. It is also not in dispute that Sri. K. Kuppuswamy was a bachelor, and has only one brother, the deceased Petitioner. The Company, being a Private Company, there are several restrictions on it with regard to transfer of shares, as rightly claimed by the learned Counsel for the petitioner, as briefly stated *supra*. Admittedly, the deceased Petitioner, being a 50% shareholder and a Director, is entitled for proportionate shares out of increased shares, before offering those shares to the respondents, and that too can be offered subject to payment of consideration. The Respondents have miserably failed to show any evidence that the deceased Petitioner was offered any new shares before offering shares to the Respondents. As detailed *supra*, the Respondents are financially unsound and have also filed *forma pauperis* suit before Civil court. The

contention of the Respondent that they have paid consideration to the shares is not at all convincing and it is without any basis. Moreover, evidence shows that several amounts have been drawn from the account of Late Sri. K. Kuppuswamy Naidu. It is also not in dispute that Will in question itself is under dispute, and suits are also pending against it

12. So far as the maintainability of the Company Petition is concerned, it is not in dispute that the deceased petitioner and Sri. K. Kuppuswamy Naidu have been holding 50% shareholding each by holding one share each. When the Petitioner has questioned the subsequent allotment of shares (14,400 shares) without offering him, in accordance with law, as stated supra, the present Company Petition is maintainable. It is a settled position of law that a person, who is admittedly holding 50% shareholding and a Director, can file the petition especially, when subsequent allotment of 14,400 shares by the Company to respondents are in question in the Company Petition. The contention of the respondents that Competent Civil Court has jurisdiction to adjudicate the matter in question in the instant Company petition is not at all tenable and the Tribunal is having jurisdiction to adjudicate the issue as it falls under the provisions of Companies Act, 1956/2013 . Moreover, as per Section 430 of Companies Act, 2013, Civil court do not have jurisdiction in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under the Companies Act, or any other law for the time being in force .

13. The other contention that the deceased Petitioner cannot allege the forgery of signatures of late Sri. K. Kuppuswamy Naidu, and he has no *locus standi*, especially when his (the petitioner) signatures are not in dispute and the same is filed after the death of Sri Naidu, is not



at all tenable and it is liable to be rejected. The deceased petitioner has filed the Company Petition in the year 2007 by questioning the allotment of shares of 14,400 in favour of the respondents and also the action taken by the respondents.

14. The Respondent No. 2 has joined the Late Sri. K. Kuppuswamy Naidu, as caretaker as per the agreement cited above, and the Respondent Nos. 2 to 4 have resorted to various illegal actions like appointing themselves as Directors, re-allotment/allotment of shares of Sri Naidu to them. It is also to be noted herein that as per the notice dated 30th August, 2006, which is filed by the Respondent themselves states that 2th AGM of the Company would be held on 30th September, 2006 at 11 AM at registered office to transact business which includes to consider and appoint R. Sadagopan (Respondent No. 3) Smt. Rajalakshmi (Respondent No. 2) and Smt T. Gayatri (Respondent No. 4).

Karnataka State Financial Corporation vide Letter No. DGM (Credits)/D 1194 dated 12th June, 2006 addressed to the Company suggested to broad base the Board of Directors to ensure continuity in the management and also the presence of an experienced person for smooth working of the Company considering the advanced age of existing two directors. In pursuance to the said letter, the Company convened the meeting of the Board of Directors on 30/08/2006, wherein it was inter alia resolved to co-opt R. Sadagopan (Respondent No. 3) and Smt. Rajalakshmi (Respondent No. 2) as Additional Directors and hold office up to the date of Annual General Meeting. Further, appointed Smt. Rajalakshmi (Respondent No. 2) as Vice-Chairman and Joint Managing Director conferring all the powers on her. Subsequently, their appointments were confirmed at the 27th Annual General Meeting of the Members of the Company held on



30.09.2006. The impugned shares were allotted to Respondent Nos. 2, 4 & 5 on 23.09.2006.

15. It is not in dispute that Smt. Rajalakshmi (Respondent No. 2) has entered into the Company as a caretaker vide agreement dated 24.12.2002 between the Company and Smt. Rajalakshmi (Respondent No. 2). She (Respondent No. 2) joined the Company on remuneration of Rs. 3,000 (Rupees Three Thousand) per calendar month. Her (Respondent No. 2) primary duty was to act as a caretaker to look after and oversee the day to day functioning of the premises situated in No. 48/49, Miller's Tank Bund Road, in the ground floor of which Late Sri. K. Kuppuswamy Naidu was residing. Smt. Rajalakshmi (Respondent No. 2) was given the first floor of the premises and a room in the second floor, the ground floor of which Late Sri. K. Kuppuswamy Naidu was residing. Smt. Rajalakshmi (Respondent No. 2) was given the liberty to vacate the premises by giving a month's notice to Late Sri. K. Kuppuswamy Naidu if he is alive or to his successors/legal heirs after his death. The agreement was a period for six years.

16. Late Sri. K. Kuppuswamy Naidu was admittedly not keeping good health, therefore the specific reason to take the services of Smt. Rajalakshmi (Respondent No. 2) as the caretaker. However, by taking advantage of the situation, Smt. Rajalakshmi (Respondent No. 2) is stated to have interfered with the affairs of the Company and got herself and other people connected with her to be appointed as Directors of the Company. She (Respondent No. 2) also got herself appointed as the Chief Executive Officer of the Company. In fact, the Karnataka State Financial Corporation in its Letter No. DGM (Credits)/D 1194 dated 12th June, 2006 as stated *supra*, has suggested to induct experienced persons to oversee the working of the Company, however Smt. Rajalakshmi (Respondent No. 2) cannot fill up



the gap to manage the affairs of the Company and she cannot be called as experienced person. As stated *supra*, Respondent Nos. 2 to 4 and K.K. Foundation and Public Charitable Trust do not have money to pay consideration for allotted shares by the Company. Moreover, Articles of Association of the Company as rightly contended by the learned counsel for the Petitioner, do not permit impugned shares to be allotted to the Respondent Nos. 2 to 4 and K.K. Foundation and Public Charitable Trust. Moreover, several civil cases are pending over the inheritance of Late Sri. K. Kuppuswamy Naidu.

By taking into consideration of the above facts and circumstances of the case, we are of the considered opinion that affairs of the Respondent No. 1 Company are being conducted in manner prejudicial and oppressive the deceased petitioner and it is a fit case to wind up the Company, but such action would unfairly prejudice the petitioner and other stake holders of the Company. Therefore, in order to put an end to the affairs of Company, the Company petition is disposed of the with following directions.

17. Further, the contentions of the learned counsel of the Petitioner that they came to know about the additional transfer of 15,599 equity shares only through the counter filed by the Respondents to I.A. No. 36/2016 (I.A. filed by deceased Petitioner) is not at all tenable and same is liable to be rejected. Hence, the I.A. No. 175/2018 is hereby rejected.

18. In the result, by exercising the powers under Sections 397, 398, 402, 403 and 406 of the Companies Act, 1956 read with Sections 241, 242 of the Companies Act, 2013, conferred on this Tribunal, the Company Petition bearing CP No. 35/2007, T.P. No. 04/2016 is disposed of with the following directions:



- a. We hereby declared illegal and set aside the impugned allotment of 14, 400 equity shares in aggregate made in favour of Respondent Nos. 2 to 4 and K.K. Foundation and Public Charitable Trust. Consequently directed Respondent No. 1 Company to transfer those shares to the legal heirs of Late Sri K. Rajaiah, after taking appropriate documents from the parties, within three months from the date of receipt copy of this order.
- b. We hereby reject other reliefs as sought by the Petitioner.
- c. I.A. No. 175/2018 filed by the petitioner is rejected as devoid of merits.
- d. No order as to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Sirisha