

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/26/CB/2017

Under Section 59, 241 & 242 of the Companies Act, 2013

In the matter of

M/s.SM DETERGENTS PRIVATE LIMITED

Shri.D.Suyaraj

...Petitioner

Vs.

M/s.SM Detergents Private Limited & 2 others

..Respondents

Order delivered on: 18.09.2018

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**K. ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Petitioner : M.K.Preetha, Advocate
For the Respondents : R.Vidhya Shankar, Advocate

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Particulars Of The Petitioner:

The Petitioner and Respondent No.2 are two sons of Mr.A. DharmarajaNadar and were the Promoters-Directors and Members of the R-1 Company, which was registered under the Companies Act, 1956 on 09-03-2000. The Promoters-Directors held 50% of the shareholders of the Company.

Particulars Of The Respondents:

- (i) Respondent No.1 is a Company, having its registered office at No.22/2 School Street, Sundakkamuthur, Coimbatore – 641010

- (ii) Respondent No.2 is a brother of the Petitioner and he is one of the directors of the Respondent No.1 Company.
- (iii) Respondent No.3 is wife of Respondent No.2 and she was allegedly appointed as an additional director of the Respondent No.1 Company on 15.04.2005 and she allegedly got transfer of 100 shares from Respondent No.2 on 15.04.2005.

Facts Of The Case (As Per The Petition):

- 1) The Petitioner and Respondent No.2 are brothers and two sons of Mr. A. Dharmaraj Nadar. One Mr.Anburaj is the other brother. The family had set up several business entities, partnership firms and propriety concerns and were engaging in the business of manufacturers and traders of soaps and detergents.
- 2) "Sundari Soap" is popular brand. M/s. Soori Detergents was set up as a sole proprietorship concern in the name of wife of the Petitioner. Another entity in the name and style "Thai Industries" was started in 1986 and the license was taken in the name of Petitioner for carrying on the business of manufacturing detergent soaps in the name of "Sundari". The business was looked after by his father, Petitioner and Mr. Anburaj. The said industry was closed in the year 1989-1990.
- 3) Thereafter, Dharmaraj Nadar, the father and the last brother Mr. Anburaj started "Sakthi Industries" in the year 1990 which was looked after by the family members but closed in the year 1991. In the year

1991, Respondent No.2 started "Lakshmi Industries" and was conducting the business as a proprietary concern and in 1993, the Petitioner and Respondent No.2 became partners and the business was run as a partnership business.

- 4) In 2000, the Petitioner and Respondent No.2 decided to start a private limited company in order to expand the business operations across other States too and they jointly promoted, formed and incorporated the company under the Companies Act, 1956 on 09-03-2000 in the name and style of "SM Detergents Private Limited".
- 5) The Petitioner and Respondent No.2 were the subscribers to the Memorandum of Association of the Company and they are named as first and permanent Directors of the Company. The company was carrying on the business of manufacturing and marketing of Detergent soaps in the name of "Sundari".
- 6) Until the impugned transfer, allotment and cessation of directorship of Petitioner, the following is the share holding pattern and composition of board of directors of the Respondent No.1 Company:

S.No.	Name	Shareholding	% of share	Position in the Board of Directors
1.	Mr. D. Suryaraj	37,500	50%	Director
2.	Mr.D. Mohanraj	37,500	50%	Director

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- 7) Disputes emerged between the brothers in connection with the manner of doing business and terms of settlement were recorded in a document titled Settlement Deed dated 8th March 2003.
- 8) In October 2016, the Petitioner saw some construction activities on the property of the company and it was learnt that some third parties are carrying out construction of shops. The Petitioner instituted a civil suit O.S.No.1540 of 2016 before the Hon'ble 1st Additional District Munsif Court of Coimbatore in which the Hon'ble Court issued an order of interim injunction.
- 9) The petitioner immediately applied for an encumbrance certificate and found that the Respondents had fraudulently alienated the property of the company to the name of Respondent No.3. The Petitioner carried out an inspection of the records at the MCA portal. The petitioner was shocked to note that the alleged fraudulent acts perpetrated by the Respondents by filing a series of documents:
 - (i) that a share transfer of 100 shares has been allegedly registered on 15.04.2005 as if there was share transfer from Respondent No.1 and Respondent No.2 ;
 - (ii) that petitioner had ceased to be a director of the company with effect from 15.04.2005 and appointment of R.3 as an additional director of the company from 15.04.2005;

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- (iii) that the petitioner had transferred his entire shares in the Company to Respondent No.2 which was allegedly registered on 10.10.2005;
- (iv) that the company had made a further issue of shares and increased the authorised, issued, subscribed and paid up capital of the company.
- 10) The Petitioner had obtained certified copies of the records from RoC in December 2016 and preferred a criminal complaint against the alleged fraudulent acts committed by the Respondents in the Respondent No.1 Company in respect of alleged share transfer and cessation of directorship of Petitioner.
- 11) The petitioner has alleged that the respondents with malicious agenda, have created and filed with a public authority to show that the Petitioner had resigned from the Board of Directors of the Company on 15.04.2005 and that the Respondent No.2 was inducted as a director of the company on 15.04.2005.
- 12) From the Annual Return of 2011, it is understood that the Respondents had gone about creating records as if the authorised share capital of the company was increased from Rs.75 lakhs to Rs.90 lakhs. There was an entry with respect to increase in authorised and paid up capital from Rs.75,00,000/- to 90,00,000/-.

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- 13) The Petitioner contended that as on 15.04.2005, the company had only two directors and two shareholders. Therefore without the presence of the petitioner, there was no question of holding board meeting or any general meeting at all. The transfer of shares alleged to have been made from R.2 to R.3 and altering the shareholding patten (i.e. 50:50) is oppressive and is in contravention of the Articles of Association of the company as alleged by the Petitioner. They have deprived the Petitioner of his inalienable and indefeasible right as a 50% stake holder of the company.

Relief (s) Sought :

i) to declare that the transfer of 37,500 shares of petitioner allegedly made by him to R.2 on 10.10.2005 , removal of the petitioner as director of the company and appointment of R.3 as director of the company as illegal, null and void and set aside the same;

ii) to declare that the transfer of 100 shares allegedly made by Respondent No.2 to Respondent No.3 and increased in authorised capital of the company from 75,00,000/- to 99,00,000/- as illegal, null and void and set aside the same;

iii) to declare the alleged allotment of 24,000 shares of Rs.100/- each to Respondent No.2 and 3 on 3rd February 2006 as illegal, null and void and set aside the same;

iv) to direct the deletion of all forms filed with Registrar of Companies after 15th April 2005 and to file rectified forms which contain correct particulars.

Counter Filed By The Respondents

- 1) The Petitioner and the 2nd Respondent held certain properties in common which included shareholding in the 1st

Respondent Company. There was no third party held shares at all in the 1st Respondent Company and the 1st Respondent Company was a family owned company. Disputes and differences arose between the brothers including in the matter of division of assets and in the circumstance, father Mr.A.Dharmaraja Nadar intervened and brought about a family understanding as early as on 07.05.2002 (Exhibit R.1). The brothers reached an understanding in the presence of the father, mediators and well-wishers by way of a Settlement Deed dt.08.03.2003 (Page 68 and 73 of Petition type set). The consensus reached and recording the same in the form of a settlement constitutes a binding Family Arrangement between the brothers.

- 2) The said settlement deed dt.08.03.2003 vide para-2 read with Schedule-II allocated the 1st respondent company in its entirety to the 2nd respondent. Since the brothers were engaged in sale of certain popular brands of detergent soaps, areas in which each of the brother was to operate was also specifically earmarked and allocated exclusively to each of the brothers.
- 3) The Family Arrangement/Settlement Deed allocated the 1st Respondent Company in entirety to the 2nd Respondent with

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the consequence being that the Petitioner ceased to have any interest in the 1st Respondent Company. In terms of the Family Arrangement, the shares of the Petitioner ceased to have any interest in the 1st Respondent Company and automatically came to be vested in the 2nd Respondent. Consequent to the Petitioner exiting from the Company in entirety, the Petitioner ipso facto vacated office as Director (Ex.R.2). This was the consequence and effect of the family arrangement which was agreed between the parties. In the circumstance, as a formal act and by giving effect to the Family Arrangement, the shares standing in the name of the Petitioner was vested in the 2nd Respondent and the Board was also reconstituted with the appointment of 3rd Respondent as a Director even in 2005, and the Annual Return for the year ended 31.03.2006 filed by the Company with the Roc, duly disclosed this fact (Ex.R.3 series).

- 4) The Petitioner has instituted certain legal proceedings in O.S. 1540/2016 before the District Munsif of Coimbatore (Ex.R.4 and that the Settlement Deed dt.08.03.2003 was executed based on mutual agreement and at the behest of elders and panchayatdars, that such Agreement was reduced to writing and that pursuant to such Settlement Agreement,



Lakshmi Industries is to belong to the Petitioner and that the Respondent Company is to belong to this Respondent. The Petitioner has categorized the Settlement Agreement as a valid Agreement binding on the parties. The Petitioner has contended that the Settlement Agreement has been put into vogue and acted upon by the parties, which is a clear admission of the transfer of shares in the Respondent Company, having been given effect to.

- 5) The Petitioner has, in a collateral proceeding in C.C.No.355/2007 before the Judicial Magistrate Court No.I, Coimbatore (Ex.R.5), deposed as witness and in his testimony, admitted that the settlement was reached in the presence of the father, that the respondent company has been allocated to the 2nd respondent and that the Settlement Deed has been given effect to.
- 6) The petitioner has taken physical possession of Lakshmi Industries and Mahalakshmi Detergents that were allocated to him under the Family Arrangement. In fact, the Petitioner has been manufacturing the detergent soaps in the Lakshmi Industries premises allotted to him, and has been marketing in all areas that have been allocated to the Petitioner under the Family Arrangement. The Petitioner has kept the

premises of Mahalakshmi Detergents under his lock and key. The Petitioner has also taken custody of the title documents relating to Lakshmi Industries, upon release of the said documents by Tamilnadu Mercantile Bank. It could therefore be seen that the Petitioner has derived extensive benefits under the Family Arrangement (Ex.R.6 series). The Petitioner, contrary to the terms of the Family Arrangement, dealt with a property to be held in common. Without reference to this Respondent. Even in this situation, the Respondent only sought for prayers through suit in OS 1484 of 2012 for declaration that the actions of the Petitioner, contrary to the Family Arrangement, are not valid (Ex.R.7).

- 7) The transfers of shares and reconstitution of the Board which took place under the Family Arrangement and implemented as early as in 2005 cannot be sought to be disturbed at this distance of time. The Petitioner himself has pleaded in the collateral proceedings that the settlement deed as a family arrangement brought about to bury the differences between the brothers. While so, the prayer for rectification of Register of Members and seeking the shares in the Respondent Company to be restored to the name of the Petitioner cannot

be granted in as much as it is completely contrary to the terms of the Family Arrangement.

- 8) The Family Agreement has been given effect to and share transfer effected in 2005 and the said fact has been disclosed in the regulatory filings viz. Annual Return even in 2006. The prayer for rectification sought for in a Company Petition filed in 2017 which is more than 10 years after the recording of the transfer is barred by limitation. The petitioner has for the last 10 years, not raised any issue about non-receipt of Notice of Meetings, non-receipt of Balance Sheets etc. The Respondent Company was even carrying on business till 2012 and also filing IT Returns/Balance Sheets etc. till 2011-12 (Ex.R.9 series). While so, the petitioner could not have remained quiet for all these years if he was under the belief that he still had 50% shareholding in the Company.
- 9) The Petitioner is not a shareholder of the Company since 2005. Hence, he is disentitled from maintaining a company petitioner u/s.241 ad 242 of the Companies Act. In any event, the very claim to be a shareholder of the company is contrary to the Family arrangement. In the circumstances, the Company Petition is per se not maintainable.

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- 10) Once the company was allotted exclusively to this respondent, increase of capital does not constitute an act of oppression. In as much as the family arrangement is binding on the parties and since under the very family arrangement, the shares stood vested in this respondent, question of using any Notice to the petitioner for any meeting of the company held thereafter does not arise. Without prejudice, it is submitted that technical pleas, in any case, cannot be allowed to defeat a family arrangement which has been given effect to years back. It is noteworthy that the petitioner has had benefits under the family arrangement and is now seeking to approbate and reprobate which cannot be permitted. The only issue raised in the company petition is covered by a family arrangement.

Rejoinder Filed On Behalf Of The Petitioner

- 1) A perusal of the Counter will prove that the main plank of arguments of the Respondents appear to that
- (a) there was a settlement agreement between the parties;
 - (b) the companies were allocated to the respective persons;
 - (c) the cause of action is time-barred; and
 - (d) non-execution of transfer forms per se do not invalidate transactions.
- 2) It is clear that the respondents have admitted that there are no valid document to prove the impugned transactions which are the



oppressive acts forming part of the Company Petition. Admission constitutes the best evidence and on this count alone, the petition is liable to be admitted.

3) The Settlement Deed was entered into on 8th March 2003, there were multiple suits and proceedings including police complaints and other proceedings details of which were already been furnished in the Company Petition itself. In fact, the document styled as Settlement Deed does not result in transfer of ownership to any party. Rather it makes it clear that until certain specified disputes, suits and proceedings end, no party is entitled to do anything to alter the status quo as obtained immediately before the Settlement Deed.

4) The Petitioner has stated that neither party had acted upon or implemented anything contained in that document completely. That the Settlement Deed executed between the parties were not acted upon which is clearly reflected in page No.140 of the Counter filed by the Respondents. Page No.140 is the Written Statement filed by the petitioner in OS No.473 of 2014 before the V Additional District Judge at Coimbatore in October 2015 in which the Petitioner in para No.5 clearly stated as follows:

“The Settlement Deed was never acted upon by the Plaintiff. The Settlement Deed, as on date, is barred under law as well. It is unenforceable and inoperative”.

5) In para No.8, it stated as follows:

“The Plaintiff cannot claim any right under the Settlement deed dt.08.03.2003, as the said Settlement Deed has no legal sanctity, clearly barred under law as well as specifically by the Registration Act. The Settlement Deed dt.08.03.2003 is not valid and unenforceable”

Thus, the respondents' contention that the settlement deed was acted upon and on the basis of which the shares of the petitioner were transferred in the name of 2nd Respondent is not tenable. The 2nd Respondent himself filed OS No.1484 of 2012 before the Hon'ble District Munsif Court, Coimbatore in view of the issues pending with respect to the Settlement Deed. The issue in OS No.1484 of 2012 is with respect to sale of personal property of the petitioner. The same is under adjudication before the respective court. It only proves that the parties have not acted upon on the basis of the Settlement Deed and issues are pending before various Courts.

6) It has been stated that as per the provisions of law a company shall not register a transfer of shares in, or debentures of the company, unless a proper instrument of transfer duly stamped and executed by or behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company along with the certificate relating to the shares or debentures, or if no such

certificate is in existence, along with letter of allotment of the shares or debentures.

- 7) It has been stated that the Respondents failed to show before this Tribunal that any instrument of transfer executed for transfer of entire shareholding of the petitioner i.e. 37,500 equity shares of Rs.100/- each to the 2nd Respondent. It can be understood from Form-66 filed by the Company on 6th April 2007 attached with the Compliance certificate given by the company secretary, in which a qualification has been made stating that the transfer of shares was made on the basis of Settlement Deed without the transfer form.
- 8) The petitioner denies the averments about the transfer of shares, reconstitution of board of directors of the company on the basis of the Settlement Deed. The Respondents have wantonly omitted to answer the allegation of the Petitioner with respect to his cessation of directorship on 15th April 2005. The Respondents have produced certificate of postings in Annexure R3 series to show that as though the notice was issued to the petitioner for the alleged board meeting dated 15th April 2005 in which directorship of Petitioner was divested and the Respondent No.3 was appointed as additional director of the company and 100 shares from Respondent No.2 was transferred to Respondent No.3. These documents are reliable. The simple requirement is to show that the

petitioner was given notice and he had knowledge not only about the board meeting of 15th April 2005 but also he was aware of the business scheduled to be transacted therein. Further, it is clear that there cannot be a Board Meeting only on this day and for all other years, the Respondents have nothing to say. There must be a series of meetings and this practice and procedures should have been brought on record.

- 9) It is alleged by the petitioner that the certificate of posting produced by the Respondents are fabricated and they are not valid before law. The records produced by the Respondents themselves will act against them. The respondents have produced certificate of posting along with the copy of notices for the board meeting dated 10th January 2005, 20th March 2005 and 15th April 2005 to show that as though the notices for those board meetings were issued to the petitioner and the petitioner did not attend meeting and hence he lost his directorship under Section 283(1) (g). The Form-32 filed with Registrar of Companies does not contain the extract of the minutes of the meeting and that even as per the notices and certificate of posting produced by them there are only 2 board meetings which were not attended by the petitioner allegedly and in the 3rd meeting dated 15th April 2005 they have removed the petitioner from his directorship. Prior to the alleged

removal of the Petitioner on 15th April 2005, there were only two directors. In that case, on 15th April 2005 how the resolution was passed without quorum present. Thus, the resolutions passed on 15th April 2005 are invalid, illegal and null and void.

10) The Form-32 filed with RoC it has been stated that the petitioner has vacated office under Section 283(1) (g) of the Companies Act, 1956. If he was not present on that day, how the meeting was conducted without his presence and how the Respondent No.3 was appointed as additional director. Whereas to the contrary, the Respondents have stated in their Counter that as per the Settlement Deed, the board was reconstituted. This itself is an admission from the part of the Respondents that they have fabricated the records and filed with the Registrar of companies.

11) The respondents did not file compliance certificate for the year 2004-2005 so that they can fabricate the records to add or delete the date of meetings to suit their needs. Further, the Shares of the Petitioner were allegedly transferred on 10th October 2005 behind the back of the Petitioner. As already stated, there was no proposal envisaging transfer of shares. The Petitioner has not executed any transfer deed documents.

ORDER

In this regard the Tribunal observes that both petitioner and the respondents have not given any clear details/reference about the enforcement of the family arrangement/agreement. Further, the Tribunal observes that there have been various other suits in various forums against each other. The Hon'ble High Court of Himachal Pradesh in a similar case has stated that;

“Jiwan Mehta v. Emmbros Metal Pvt. Ltd and others (2010 SCC OnLine HP 45).

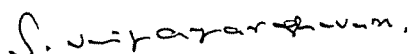
This family settlement makes it apparently clear that the petitioner was aware about the agreement between the brothers that they would swap their share holdings in each company leaving a set of two brothers in exclusive control of the company which fell to their share. It is also not disputed that five brothers have swapped their shares . It is only the petitioner who has failed to do so. The petitioner was well aware of the fact that the brothers had agreed to swap their shares. He even signed the agreement in this regard. He thereafter visited the office of the Registrar of Companies, Jalandhar and found out that the respondents had increased their share-holdings in the Company and also reduced the share holding of the petitioner. On that date i.e 24th April, 2000 he also knew that he had been removed from the Directorship of the Company on the ground that he had not attended three meetings. There is no valid explanation as to why he kept silent till the year 2004. It is urged by Shri Chopra, learned senior counsel for the petitioner that the petitioner being the eldest brother did not take the matter to the Court and was trying for a compromise and therefore, did not approach the Court earlier. This explanation is totally false. From the facts on record, it is apparent that it is only the petitioner who has failed to comply with the agreement and all the other brothers were willing to perform their part of the agreement. The petitioner had acquiesced in the transfer of the shares and has, therefore, waived his right, if any, to challenge such transfer. Moreover, there is a delay of four years in raising such a challenge. We are of the considered view that the CLB had rightly held that in view of the

acts of the petitioner and also in view of the unexplained delay the petition itself was not maintainable.”

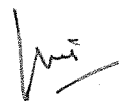
In view of this, the Tribunal observes that the petitioner is aware of the family arrangement and that as per the family arrangement the said Company i.e. 1st Respondent is to be managed by the 2nd Respondent, the petitioner as the main shareholder ought to have been vigilant about the happenings of the 1st respondent Company. Only in the year 2017 the petitioner has raised an issue while the impugned share transfer took place in 2005. The contention of the petitioner, who was the director and 50% share holder in the 1st Respondent Company that he was not aware of the share transfer and the reasons for delay in filing this petition are not justified and are in gross violation of Section 433 of the Companies Act, 2013.

In view of this, the Tribunal is of the opinion that the petitioner is not entitled for any relief Under Section 59, 241 & 242 of the Companies Act, 2013 and the **CP/26/CB/2017 stands dismissed.**

There will no order as to costs.



(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)



(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

/sd/