

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P.No. 54/397-398/CLB/MB/MAH/2016

CORAM:

Present: M.K.SHRAWAT  
MEMBER(JUDICIAL)

In the matter of Companies Act, 1956 under Section 397/398 and 241/242 of the  
Companies Act, 2013.

Between: Fluidda NV

: Petitioner

Versus

Fluidda India Imaging Pvt. Ltd. & Ors. : Respondents

Present on behalf of the parties:

- 1) Mr. Sameer Pandit )  
a/w Ms. Madhupreetha Elango )  
i/b M/s. Wadia Ghandi & Co. ) ...Advocate for Petitioner.
- 2) Vineet Jagtap )  
i/b Niranjan Jagtap & Co. ) ...Advocate for Respondent No. 2 & 3.

**ORDER**

Date of Hearing : 16<sup>th</sup> February, 2017  
Order Pronounced on 10<sup>th</sup> March 2017.

- 1) The Petition under consideration was submitted before the then CLB on 1<sup>st</sup> April, 2016.

A) Facts of the Case:-

- 2) In this case the Petitioner is a Company incorporated under Belgium Law, having its office in Kontich, Belgium. The Petitioner is having 80% shareholding by subscribing 8000 Equity Shares of the Respondent Company incorporated under Indian Laws having its Registered office in Nasik, Maharashtra. The Respondent No. 1 Company was incorporated under Companies Act on 11<sup>th</sup> January, 2011. The Respondent No. 2 namely Mr. Sameer C. Vinchurkar was allotted 20% of the total shareholding of R-1 Company. It is informed that the nature of business was commercialisation of "Respiratory Imaging Technology". The Petitioner was interested to set up an in-house processing unit in India therefore incorporated the Company (R-1) in India. A "Shareholder Agreement" was executed on 4-11-2010 for the purpose of formation of Company R-1, which was executed between the Petitioner Company and Respondent No.2. As per the said agreement, on one part, the Belgium Company was founded under Belgium Laws on 27<sup>th</sup> of October, 2005, having business in Biomedical field and claimed to be specialised in



Respiratory medicine and on the other part, Mr. Sameer Vinchurkar, being an employee of FluidDA NV prepared to help in establishing a new Company in India. Mr. Vinchurkar was made responsible to train employees of Fluidda, India using his own skill in Bio-medical Image Analysis.

- 2.1) The brief background, as narrated, was that R-2 was admittedly an employee of the Petitioner Company. As per the Shareholder Agreement considering the background of R-2 it was decided to establish a new company in India. One of the clauses emphatically mentioned during the argument, necessary to mention at this juncture, was that the agreement would be terminated in case of death or in case Mr. Vinchurkar (R-2) is terminated by Fluidda for any reason. One of the clauses i.e. Article 5 provided that as compensation to the services of R-2 an offer of 20% of the shares of the Indian Company was made to Mr. Vinchurkar. It was also agreed upon that for the duration of this agreement R-2 would not offer his services to any competing entity.
- 2.2) The Constitution of the Indian Company (R-1) was that 8000 shares were held by the Petitioner & 2000 shares were held by R-2.
- 2.3) The allegations against R-2 as narrated in the impugned Petition can be summarised as follows:-
- a) A registered office of R-1 was established as per a "Leave and License Agreement" entered into with R-4. The allegation is that the said agreement was never approved in any meeting of the Board of the Company. The R-2 had not provided a copy of the said "Leave and License Agreement" to the Petitioner.
  - b) In October 2015, R-2 had proposed to purchase a new property instead of having the office in the said rented premises. The Petitioner had stated that during the period of 2011 to 2015 the Respondent No.2 was an employee of the Petitioner managing the day-to-day affairs of the Indian Company. The Petitioner has nominated a Director, Mr. Jan De Backer on the Board of the Indian Company (R-1). A discussion was held according to which the R-1 was proposed to own 49% in the new property and the remaining 51% to be owned by the R-2. The statement of the Petitioner is that the "Nominee Director" had never consented to the said transaction. The Petition contains series of correspondences exchanged between said Director and R-2 in this regard. The objection of the Petitioner is that the R-2 had not provided the proposed Sale Document for perusal. On 10-11-2015 the said nominee Director informed R-2 to refrain from signing or entering into the said proposed Purchase Agreement. At that time to the surprise of the Petitioner it was informed by R-2 that he had already paid an advance equal to 40% of the purchase price to the owner of said new property. It was informed by R-2 that post-dated cheques were issued from the account of the Indian Company (R-1). Due to the



said objection, R-2 had at one point of time communicated that he would negotiate with the owner of the new property for return of the cheques and the amount. The allegation is that without proper authority R-2 had illegally signed the agreement, if any, as well as without authority issued post-dated cheques (stated to be for an amount of Rs.63,70,000/-) on behalf of R-1 company. The objection of the petitioner was that no information was submitted about the negotiation of the said "New Property". As well as even not informed, although on enquiry, the name of the person who had signed those cheques on behalf of the company. According to the Petitioner the answer of all questions raised at that time to R-2 were evasive and misleading. Later on it was informed that sister-in-law of R-2 (Miss.Kirti Vinchurkar R-3 in this case) had been given a Power of Attorney to act on behalf of the company. The Petitioner was informed that the owner of the "New Property" had refused to return the cheques of Rs.63,70,000/- handed over to him by R-2 and R-3. According to the allegation the Petitioner had suspected that the said transaction was created by R-2 for his own personal benefit.

- c) The next allegation was that on 15-11-2015, R-2 sought permission from the Petitioner to grant additional holiday to the staff. According to the Petitioner it was planned by the R-2 to vacate the Registered Office Premises in the guise of repairs. Through e-mail R-2 had informed that the roof of the office had been damaged due to an Internet Tower installed at the said premises. Because of the damage, the landlord (R-4) had asked to vacate the office. Although the nominee director had permitted to vacate the office premises only for the purpose to carry out the repair work but it was found to be a false hood of R-2. The instructions given to R-2 was to prepare an inventory of the Company's assets in the office and also to pursue Insurance Claim. However, R-2 vide e-mail dated 15-11-2015 had intimated that there was no Insurance cover for the Registered Office Premises.
- d) The next allegation is that the R-2, 3, & 4 were acting in collusion to extract money from the Petitioner. The Petitioner was denied access to the Registered office of the Company. The Petitioner was also denied to examine the records of the company. According to one communication the R-4 had demanded compensation to the tune of Rs.15,00,000/- towards damages. The statement of the Petitioner was that the Leave and License was executed and arranged by R-2 with R-4 and only R-2 had made a proposal to install Internet Tower on the building with an impression that such installation was legal and duly authorised. R-4 had issued a legal notice dated 23<sup>rd</sup> November, 2015 calling upon the Company (R-2) to vacate the registered office and to pay damages of Rs.15,00,000/-. But the fact was that as per the communication received from R-2 the office had already been vacated. That information was provided by one Miss Sneha Joshi, Senior Image Analyst, an



employee of R-1. According to the petitioner, R-2 had not provided full and accurate details of the financial dealings. According to the allegation it was a gross financial irregularity committed by R-2.

- e) To safeguard the interest of the company (R-1) the nominee director had issued a letter dated 17-11-2015 to the bank and called upon to stop the operation of the Bank Account.
- f) As per the Petition vide e-mail dated 22<sup>nd</sup> Nov., 2015, R-2 had attempted to erase the record of his mismanagement. Through that e-mail R-2 had proposed to amend the Minutes of the Board Meeting held on 19-11-2015. It was also found by the Petitioner that R-2 had published confidential information on his personal social net-working account. The Petitioner terminated the service of R-2 on 18<sup>th</sup> December, 2015. The Petitioner had offered a severance package of six months' remuneration.
- g) A Board meeting was held on 10<sup>th</sup> March, 2016 unanimously passed a resolution to convene EGM on 8<sup>th</sup> April, 2016. At that meeting R-2 had adopted a threatening stance by informing that neither he nor his family members or any employee would furnish any documents to the company. According to the allegation, R-2 had breached his fiduciary duty towards the company. R-2 had also failed to file the information to the office of RoC required under Companies Act.

**B) Arguments of Petitioner:-**

- 3) From the side of the Petitioner in the light of the above factual back ground, Ld. Advocate Mr. Sameer Pandit pleaded that this is a case of mismanagement of the affairs of the company. The R-2 had also played tricks to extract money from the Petitioner. In the name of purchasing a new property for the office premises he had tried to extract huge amount and thereafter tried to extract another huge amount in the name of the land lord of the registered office. On 19<sup>th</sup> November, 2015 the Board had therefore appointed the Nominee Director as a sole signatory for all financial transactions including operation of Bank Account. The R-2 was informed to cancel all the cheques issued by R-3 immediately. As a consequence, the services of R-2 have also been terminated vide letter dated 18<sup>th</sup> December, 2015. However, a generous "severance package" was offered. R-2 was asked to surrender the shares. The misdeed was that the staff of the company was also persuaded to resign en-mass. The R-2 had mismanaged the affairs and deliberately suppressed material information for oblique reasons. As per the "Shareholders Agreement" on termination of employment the said Agreement would also be terminated. The Ld. Counsel has pleaded that a direction should be issued to Respondent No. 2 to transfer 2000 equity shares held by him in favour of the petitioner. He shall also be directed to submit the details of the transactions

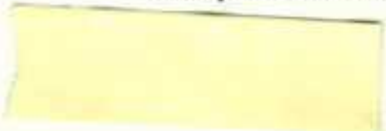


executed by him without any authority. He should be directed to go out of the company to protect the interest of the company. Reliance was placed on the decision of CLB Principle Bench New Delhi reported as ((2004) 121 CompCas 712(CLB), (2004) 53SCL22(CLB)) dated 02-12-2003. Ld. Advocate has also pleaded that it was a case of oppression by R-2 being in control of the affairs of the company for which he should be held responsible. The controlling powers were mis-utilised by R-2. Reliance was placed on the citation SCOTTISH CO-OPERATIVE WHOLESALE V/s. MEYER (324 House of Lords 1959) authored by Lord Denning.

C) Arguments of Respondent:-

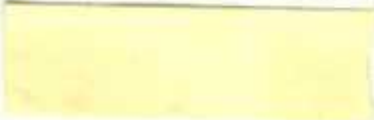
- 4) From the side of the Respondent Ld. Advocate Mr.Vineet Jagtap appeared. He has informed that the Respondent No.2 Mr. Sameer C. Vinchurkar is a highly qualified person having Doctorate degree. The Respondent is a native of Nasik, Maharashtra holding Engineering Degree from Pune University and Doctorate in Engineering from Virginia University, U.S. He is specialised in Assessing the quality of medicine to enable the manufacturer to upgrade the quality of medicine. He has made several Research in his academic career. In that capacity he was associated with the Petitioner Company since 2008. He happened to be the first official employee of the petitioner. To encash his knowledge and experience it was offered to start a company in India under his supervision in the year 2010. To start the company in India he has worked hard and successfully entered into the Indian market. Because he was responsible for the promotion of the business in India, therefore he has incurred expenditure out of his own pocket. Even some times he has paid salary to the staff of the company (R-1.) According to Ld. Counsel the allegations are false and bogus. The petitioner had promised to pay the compensation for the services but from year 2010 till date no dividend or compensation was paid to R-2. He being in "minority" by holding only 20% shares was in fact oppressed by the Petitioner being in "majority". The petitioner Company had appointed Directors of its choice who have interfered in the day-to-day functioning of the company. The R-2 in fact had acted as an employee hence the accusations of mismanagement is incorrect.
- 4.1) Learned Advocate has pleaded that As per the regulation of Companies Act, foreign company can be incorporated in India if an Indian Citizen is appointed as one of the Directors. Only because of this reason he was offered 20% shareholding. He has received the instructions from Mr. Jan De Backer hence it is wrong on the part of the petitioner to file a suit against R-2 as a Director of R-1 company. R-2 was holding merely a symbolic shareholding of 20% therefore he must not be held responsible for mismanagement of R-1. At best this can be a dispute in the nature of employer-employee relationship. The Ld. Advocate has therefore vehemently pleaded that the petition by itself is out of the purview of the provisions of Section 397/ 398 of Companies Act, 1956.



- 4.2) The Respondent - 2 has made all efforts to establish the office and to employ necessary staff in India. Because he has not been given financial assistance therefore out of the minimum resources he has established this subsidiary in India only with the help of his father and family members. When the Petitioner has demanded compensation and the dividend then the nominee director has started raising questions on the bona-fide decisions of R-2. The Ld. Representative has further stated that the Petitioner company was started with two persons only i.e. Mr. Jan De Backer and R-2 in a tiny cubicle in Belgium in the year 2008. Because of the efforts of R-2 the business of the Petitioner Company had flourished in Belgium and other parts.
- 4.3) The Respondent was assured by the Petitioner to pay an additional salary in lieu of his services in India. He was promised to pay 750 Euros per month for 3 years i.e. from the year 2010 to 2013 and thereafter 1500 Euros per month for next two years. The Respondent had demanded it Indian rupees around 46,30,000/- but instead of making payment allegations have been raised.
- 4.4) About the allegation of purported purchase of new property, the explanation offered by R-2 is that the Petitioner had agreed to compensate R-2 by purchasing a property in which 51% share agreed to be in the ownership of the R-2 and rest with the Petitioner. It was also agreed that as per the said package deal the said property was to be rented out to the R-1 Company on a monthly rent of 2000 Euros. To substantiate this explanation, referred e-mail dated 28-10-2015. A suitable property at Nasik was identified and duly informed through said e-mail which was initially agreed upon by the petitioner. Through another e-mail dated 09-11-2015 the Petitioner had agreed and informed that a legal advice is required to buy a property. Since the entire process of identification, negotiation and closing the deal was left on the decision of R-2 therefore in good faith issued post-dated cheques or Rs.63,70,000/- i.e. 49% of the consideration to the proposed seller. The Petitioner was fully aware because the proposal of purchase was duly communicated. However, the matter was delayed by the Petitioner/Nominee Director which caused harassment to the Respondent. According to the defence it was a deliberate attempt to remove R-2 from the Directorship to avoid the payment as claimed towards services offered.
- 4.5) It is further pleaded that at the back of R-2; Mr. Backer started contacting employees of R-1. On 18 December, 2015 services of R-2 was terminated from the Petitioner company, Belgium. The said "Severance Package" was agreed upon only pursuant to a phone call of Govt. authority of Belgium regulating fair practice by employers towards employees. Ld. Counsel has accepted that the severance package was paid but it was only towards the services of R-2 in Belgium while under employment of Petitioner. That payment has nothing to do with the compensation of the services rendered in India for establishing R-1 company.
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Mr Backer had addressed a letter on 26-02-2016 and informed that R-2 was not entitled for any compensation connected with the services in establishing and running R-1. According to him it was *my* duty to render service in India for which salary had been paid in Belgium. The R-2 along with his family members were threatened for legal action by Mr.Backer.

- 4.6) About the allegation of operating the Bank Account of R-1, referred a Power Attorney executed on 1<sup>st</sup> Aug. 2011 through which R-2 was given authority as well appointed Ms. Kirti S. Vinchurkar as a Constituent Attorney of the Company. It was specifically noted down in the Power of Attorney that the Directors were residing at Belgium and for the purpose of business development and expansion Mrs. Kirti was appointed to act on behalf of the company to manage the office, to control the staff, to pay the monthly salary, to open one or more account/s of the Company. Ld. Representative has therefore pleaded that the allegations are baseless because the authority was already given which was objected only to avoid legitimate payment to R-2.
- 4.7) The Petitioner has requested R-2 to arrange office on rent. Like-wise when the owner of the rented property made objection and asked to vacate the premises then the Petitioner has made a proposal to purchase a new property. Ld. Counsel has pleaded that R-2 must not be blamed for the proposal of the purchase of new property. As per the tradition a post-dated cheque was issued with good intention.
- 4.8) The explanation of installation of High Speed Internet Tower at the roof of the office is that Internet Tower was constructed by TATA Internet Services for accessing High Speed Internet for the benefit of R-1. It was installed at the behest of Mr. Backer who later on backed out and raising frivolous allegations. On 18<sup>th</sup> April, 2014, Mr. Backer and one Mr. Wilfried visited the office and are aware about the Internet Tower and the functioning of the staff. Due to the installation of tower a leakage was detected and the owner of the property demanded to vacate the property.
- 4.9) Ld. Counsel has also drawn attention that the R-2 has acted in good faith but with ulterior motive removed from the service. Even then R-2 had expressed his willingness to resolve the differences and made a request to settle the issues amicably. He has referred one e-mail dated 17<sup>th</sup> April, 2016.
- 4.10) A legal objection has also been raised that under the provisions of Section 397 and 398 a Petition can be filed by the "Minority Shareholders". The relief against oppressive action can be claimed by the minority. In this case the majority shareholder has moved the petition which is not permissible therefore pleaded to dismiss at the very thresh-hold.
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D) Argument in Rejoinder:-

- 5) In Rejoinder argument Ld. Counsel has referred a decision of Hon'ble Delhi High Court pronounced in the case of Gurpratap Singh V/s. Vista Hospitality Pvt. Ltd. 2013(138) DRJ 335 dated 09-09-2013 for the legal proposition that majority shareholder can file a petition under section 397,398.

E) Findings:-

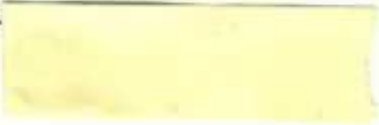
- 6) Parties heard at length. Allegations and counter allegations were raised and duly considered in the light of the evidences annexed with the Petition and the Reply. The evidences mainly revolve around the correspondence exchanged between parties that too through several e-mails.
- 6.1) At first it is required to resolve the legal objection raised by the Respondents that the Petition should be dismissed as non-maintainable on account of the provisions of Section 397/398 wherein it is prescribed that only minority shareholders can file a suit alleging oppression or mismanagement or both. In this case the accepted factual position is that the Petitioner is holding 80% shares hence not in "minority" but in "majority". This nature of legal question has been raised in the past on several occasions before Hon'ble Courts and the present settled position of law is that ordinarily "majority" is able to protect its interest hence cannot allege mismanagement or oppression once at the helm of the affairs. But the reverse cannot be ruled out if the "minority" is in a position to control the affairs of the company. Viewed from this angle, the Hon'ble Courts have opined that in a situation when majority had been paralyzed by the acts or omissions on the part of the minority, can seek protection of the court under these sections. Therefore it is held that if the affairs of the company are being conducted in a manner oppressive to **any member** can take shelter under these provisions. Placing reliance on the case law cited supra this preliminary objection of the Respondent is hereby rejected.
- 6.2) Factual matrix of this case have revealed that the Respondent No.2 is a qualified professional employed by the Petitioner Company incorporated in the year 2005 having office in Belgium. He has worked as an employee for number of years stated to be from the year 2008. In the year 2010 a "Shareholder Agreement" was executed to start a subsidiary company in India. In consequence thereof, R-1 Company was incorporated in the year 2011 having its Registered Office, in Nasik, Maharashtra wherein 80% shareholding was vested with the Petitioner Company and 20% shareholding was owned by R-2. A small amount was contributed towards capital respectively of Rs.8000/- and Rs.2000/- only. Facts of the case and the intention gathered from the evidences on record it transpires that the R-2 was made responsible to establish R-1 in India. Not only this that R-2 was given the




responsibility but one of his relatives namely Mrs. Kirti S. Vinchurkar was appointed as a "Constituted Attorney" by executing a Power of Attorney dated 01<sup>st</sup> August, 2011 signed by the Directors Mr. Sameer Vinchurkar and Mr. Jan De Backer of M/s. Fluida India Imaging Pvt. Ltd. It is worth to make a note of the fact that neither the Petitioner nor the Respondents have placed on record the financial position and the profits earned by the R-1 Company. Both the sides are silent about the quantum of revenue generated during the years of operation of R-1 Company.

6.3) With this background now it is required to ponder upon the allegations made by the Petitioner. The first main allegation, need not to mention the allied controversies is in respect of the office premises taking on rent by R-1. As far as the question of taking on rent of the premises in question, no serious charge has been made out by the Petitioner that why at all it was taken on rent. The only substantive charge is that the R-2 had concocted a story of payment of Rs.15,00,000/- to the property owner and the removal of office documents/equipment in unauthorised manner. As far as the alleged amount of Rs.15,00,000/- is concerned no payment in fact had actually been made to the land owner. If at all, an attempt was made, that too subject to controversy, but the same was thwarted. Because the payment had not been made hence R-1 Company has not suffered any loss. No prejudice had in fact caused to R-1 merely by an intention of payment expressed by R-2. The e-mail exchange in this regard have been carefully examined and on that basis it can be concluded that R-2 had made an attempt by seeking permission of the other Director to make the payment to R-4 Land Lady. Maxim is "*non efficit affectus nisi sequatur effectus*" (The intention amounts to nothing unless some effect follows). Up to this extent it can be safely concluded that no case has been made out to allege that the R-2 had deliberately and dishonestly mismanaged or siphoned the funds of the company.

6.4) The next controversy is about the removal of documents and other equipments from the office premises. Rather on perusal of the pleadings it transpires that the R-2 has not denied in clear terms that the documents/ equipments have not been shifted. The correspondences in this regard have established that admittedly the office was vacated and the goods were shifted. At this juncture itself I hereby direct the R-2 to prepare an inventory of the documents and the equipments shifted from the office premises of R-1 and hand over the same to the representative of the Petitioner by obtaining a receipt as an acknowledgement of handing over of the documents/ equipments. It is also decided to direct the Petitioner Company to clear the rental dues, if any pending, of the rented premises. Further it is clarified that R-4 is not entitled for any compensation as allegedly demanded because not established to the hilt with corroborative evidences the nature of the damage and if at all, what is the quantum of the alleged damage.





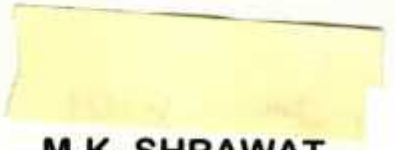
- 6.5) The next controversy is about the proposal made by R-2 for purchase of "New property". This allegation is technically of the same nature as discussed supra. An attempt was made by R-2 to purchase a new property to be used for office purpose of R-1 but with a proposal of holding 51% share by R-2 in the ownership of the property. The claim of R-2 was that an advance of Rs.63,70,000/- was handed over to the owner through post-dated cheques. Nevertheless, the undisputed fact is that those cheques were never encashed. Rather after objections taken back by the R-2. Due to this reason it is wrong to blame that a loss has actually been caused to R-1 Company. Although a step was taken and an attempt was made but that was stopped by Mr. Jan De Backer. It is not justifiable on the part of the Petitioner to blame that due to the said intended action a prejudice has caused to the Petitioner or R-1 Company. Merely an allegation without corroborative clinching evidence cannot lead to grant punishment. Hence the allegation of misappropriation of funds or mismanagement of funds remained unsubstantiated. Hence discarded.
- 6.6) Over all position of the case take us to a conclusion that the R-2 being in minority is no more interested to hold 2000 shares of R-1 company. Moreover this fact plays an important role that the present position of the Board is that R-2 has been marginalised. The Petitioner Company with the assistance of the Directors/ Additional Director is at the helm of the affairs of the Indian Company (R-1). This Bench is also aware of the fact that Article 4 of "Shareholders Agreement" dated 04-11-2010 had laid down a condition that in case of termination of service by FluidA NV the agreement got terminated automatically. Rather evaluating this position; Ld. Representative of R-2 has pointed out a correspondence through e-mail dated 17<sup>th</sup> April, 2016 wherein it was communicated and expressed a desire to settle the dispute. If this suggestion is taken solemnly then that too in the light of the basic intention of legislation incorporating Section 397/398 in Companies Act 1956 the dispute among the parties can be addressed in toto because it is prescribed that the interest as well as the welfare of a Company is paramount. The said provisions have not only suggested but made a law that if the Tribunal is of the opinion that the Affairs of the Company can be conducted efficiently and also with a view to bring an end the dispute, may pass such an order "as think fit". In a situation when the rival groups, two in the present case, have strained relationship so cannot continue together to run the Company, then it is best in the interest of the Company to persuade one of the groups to exit from the affairs of the Company. For this reason it is hereby directed that the R-2 shall transfer the shareholding of 2000 shares in favour of Petitioner or its representative by adopting due process of law and by completing the requisite formalities. Yet the question of consideration at which the shares to be transferred is to be resolved. This Bench is of the view that this is not to be decided independently but to be resolved along with the counter-claim of the Respondent, addressed herein below. The Relief as per para 7.1 (A) sought by the Petitioner is granted.
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6.7) Next is the vital issue that how much is the fair and equitable amount to be transferred so that litigation must end for ever. The first point is to ascertain the fair value of the shares on which the R-2 can transfer as directed in the above paragraph. In general value of the shares can be ascertained on the basis of the financial position of the company. Difficulty is that in the absence of the account of the Company, the financial position or the capacity to earn profit or good-will cannot be determined. As noted in foregoing paragraph, best is to take a holistic view. Therefore, the other aspect in the shape of counter-claim of the R-2 is also to be taken into account. A reasonable approach towards this direction is not to ignore the fact of services of R-2 utilized by the Company. Due to this fact, he is entitled to get a reasonable return of his services rendered in establishing the Company. How to assess a compensatory amount is a tedious job especially when the details of the financial position is missing in the compilation filed either by the Petitioner or the Respondent. A simple formula is to see the period during which the R-2 has rendered his services along with his family members. The Shareholder Agreement is dated 04-11-2010 and the Company was incorporated on 11-01-2011. The dispute arose when R-2 proposed to purchase a new property in the month of October, 2015. Services of R-2 was terminated from 18-12-2015. From the date of "Shareholder Agreement" i.e. November, 2010 to the date when first time controversy started was October 2015 i.e. for the duration of about 59 months. Not to be punctilious, rather to be on safe side, if calculate 50 months and salary of a minimum reasonable amount of Rs.20,000/- per month then it comes to Rs.10,00,000/- (Ten Lakhs). This Bench is very much aware of the fact that R-2 had already been given a "Severance Package" on termination from FluidA NV services as per Belgium Laws, but according to me equity demands to pay a minimum justifiable amount for the services/ assistance rendered in India. Therefore, to compensate R-2, who is a well qualified person, an amount of Rs.10,00,000/- (Ten Lakhs) is just and reasonable to be paid by the Petitioner for transfer of shares as also for peaceful exit lock, stock & barrel from the affairs of the R-1 Company. According to my understanding this solution shall meet the end of justice. Rest of the Relief claimed by the Petitioner thus either addressed or gets merged in the Findings pronounced supra.

7) The Petition is disposed of in the above terms; to be consigned to records.

Date: 10<sup>th</sup> March, 2017.

  
**M.K. SHRAWAT**  
**MEMBER (JUDICIAL)**