

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CA No. 136/2017  
In  
C.P. No. 74/241/HDB/ 2017  
U/S 59, 241, 242 R/w 447 of  
Companies Act, 2013

**In the matter of**

1. Mr. Balraju Sunkari  
S/o S. Narasimham  
R/o H.No. 1/2/173, Kamsari Bazar  
New Bowenpally, Secunderabad  
Telangana – 500011 Applicant/Respondent No.2
2. Mr. K. Mahesh Goud  
S/o K. Swamy  
H.No. 3-2-70, Rahmath Bagh  
Kachiguda, Hyderabad  
Telangana – 500027 Applicant/Respondent No.3
3. Mr. Mamidi Balwanth Reddy  
S/o Late Rami Reddy  
R/o H.No. 19-5-88, Plot No.457  
186/2RT H.No. 10-3-513  
Near St. Ann's School  
Vijayanagar Colony, Hyderabad  
Telangana Applicant/Respondent No.5

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Versus

1. Mr. N. Sekhar Reddy  
S/o Late Lakshmi Narasimha Reddy  
R/o Flat No. 401, Hillcrest Apartments  
Road No. 4 Banjara Hills  
Hyderabad – 500034, Telangana Respondent/Petitioner.1
2. Mr. N. Dharanidhar Reddy  
S/o Sekhar Reddy  
R/o Flat No. 401, Hillcrest Apartments  
Road No. 4, Banjara Hills  
Hyderabad – 500034  
Telangana Respondent / Petitioner No.2  
& 10 others



Date of order: 28<sup>th</sup> July, 2017

**CORAM**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

**Parties / Counsels Present**

For Applicant/ Respondents: Ms.Vanga Anita, Shri V.Venkata Rami Reddy, Shri Y. Suryanarayana, Shri S.Chidambaram, PCS, Shri A.Sanjay Kishore, Shri Naresh Kumar Sangam, Sanjay Kishore and Shri H.Rajesh Kumar, Advocates

For Respondents/Petitioners: Dr. S.V. Ramakrishna, Shri S.V. Vanshi Krishna & Ms Deepa Sree Advocates

Per: Rajeswara Rao Vittanala, Member (Judicial)

**ORDER**

1. Heard Ms.Vanga Anita, Shri V.Venkata Rami Reddy and Sri Y.Suryanaraya learned counsels for the Applicants/Respondents and Dr. S.V. Ramakrishna, with S.Vansi Krishna learned counsels for Respondents/Petitioners.
2. The present Company Application bearing CA No.136/2017 in C.P.No.74/241/HDB/ 2017, has been filed by Mr. Balraju Sunkari & two (02) others (Respondents in CP), under Rule 34 of NCLT, 2016, by inter-alia, seeking a direction to dismiss the Company



Petition, as it is not at all maintainable they have failed to comply with the provisions of section 244 (a) of the Companies Act, 2013, and also Rule 70 of NCLT Rules, 2016, etc.

3. The main contention of the Applicants herein, is that as per 244 (a) of the Companies Act, 2013, they have to hold minimum shares in Respondent No.1 Company to maintain the petition. However, it is alleged and the 1<sup>st</sup> Respondent Company itself alleged that though the first Petitioner of Company Petition was initially holding 8580 shares in the Company, subsequently he sold his entire shareholding and transferred to 11<sup>th</sup> Respondent on 09.09.2014, and thus, he ceased to be member of the First Respondent Company on 20.11.2014. The Second Petitioner is the son of the First Petitioner, and he never held any shares in the company. So both the Petitioners are not qualified to file the Company Petition under Section 241 & 242 of the Companies Act, 2013. Secondly, they have contended that the Petitioners of the C.P are resorting to forum hunting by approaching several courts earlier and by suppressing several facts has filed present Company Petition, which is not all maintainable on several grounds as raised in the application and therefore, it is contended that main Company petition itself is liable to be rejected in limini at admission at stage itself without going into merits of case.

4. Dr. S.V. Ramakrishna, Learned Counsel for the Petitioner, on the other hand, submits that the present Company Petition is maintainable on the simple ground that this Tribunal has disposed of earlier C.P No. 55 of 2014 on 16.01.2017 as withdrawn, by granting liberty to





the Petitioner to file fresh Company Petition for the same cause of action by taking all available pleas. And thus, he has filed the company petition in question by questioning several illegal acts including the alleged transfer of shares as resorted to by the respondents .The Second petitioner was illegally removed from the Directorship of the Company and thus, he has also questioned the illegal action.

5. It is not in dispute that the earlier CP 55/2014 was filed, the same was adjudicated on merits and it was disposed by this Tribunal as stated supra. The reliefs as sought by the petitioner in this CP are as under:-



(a) To declare and set aside the increase of authorised capital from Rs. 22,00,000/- to Rs. 35,00,000/- and to restore the authorised capital of Rs. 22,00,000/-

(b) To declare the meeting alleged to have been held on 07.11.2013 for increasing the authorised capital as illegal and void.

(c) Cancel the allotment of 13000 equity shares of Rs. 100 each amounting to Rs. 13,00,000/- purported to have been allotted to Respondent No.5 as the same is illegal and void,

(d) To declare the purported removal of petitioners from the post of Directors and that of petitioner No.1 from the post of Managing Director and to declare that they continue to be Directors etc.

6. By perusal of the pleadings in the Company Petition in question, the pleadings raised in it are all in accordance with permission granted by the Tribunal. The contention

of the first petitioner is that he was holding 17,160 equity shares apart from 8580 shares, which were subsequently purchased from others. However, the Applicant in the CA are alleging that the petitioner of CP was initially holding 8580 equity shares and that these shares were subsequently transferred, and thus it is contended that the first petitioner was not at all holding any shares. It is to be mentioned here that all these acts are questioned in the company petition in question. So all the allegations made by both the parties are required to be examined by the Tribunal at the time of final hearing of main company petition itself, and to consider contentious issues in parts would cause further delay to decide the case. Hence, it would be appropriate to decide the main case itself immediately after completion of pleadings.



7. As regards to the other allegation that the respondents/petitioners are resorting to several frivolous/mischievous litigations before various judicial forums, it is to be stated that law permits every aggrieved party to approach appropriate judicial forums for his/her remedy, and it is for the court concerned to decide whether such litigant is right or wrong or whether it is forum shopping or not. If the litigation is found to be frivolous/mischievous etc, the competent court is empowered to suitably compensate the victims of such litigation.
8. In view of the facts and circumstances of the case, it would be just and proper that present application can be disposed by directing Respondents to file a comprehensive reply to all allegations made in the

Company petition, apart from contentions/allegations made in the present application.

9. Accordingly, the CA No 136/2017 in C.P. No.74/241/HDB/ 2017 is disposed of. Post the CP for final hearing on 30.08.2017.



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*Sd/-*  
Rajeswara Rao Vittanala  
Member (J)

*V. Annapoorna*  
**V. ANNAPOORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD.

प्रमाणित प्रति  
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केस संख्या  
CASE NUMBER *CA No. 136/2017 In CP No. 74/241/*  
निर्णय का तारीख *HDB/2017*  
DATE OF JUDGEMENT *28-7-2017*  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON *31-7-2017*