

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

C.A. NO. 316/2014

IN

T.C.P. NO. 58/397, 398/CLB/NCLT/MB/2014

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 397 & 398 111A R/W Sections 402, 403
and 406 and other applicable provisions of the Companies Act, 1956.

BETWEEN:

M/s. Amsar Private Limited ... Petitioner

AND

M/s. Amsar Goa Private Limited & Ors. ... Respondents

PETITIONER:

M/s. Amsar Private Limited
72, Warden Road
Mumbai 400 026.

RESPONDENTS

1. M/s. Amsar Goa Private Limited
1 Plot No. S-12, Colvale Industrial Estate
Colvale Bardez
Goa 403 513. .. Respondent No.1
2. Shri Vikram Andrew Naharwar
2, Hormuz Mansion
72, B, Desai Road
Mumbai 400 026. .. Respondent No.2

PRESENT ON BEHALF OF THE PARTIES:

FOR THE PETITIONER

1. Mr. M.S. Bhardwaj, Advocate
2. Mr. V.P. Verma, Advocate

FOR THE RESPONDENTS

Mr. Abhay Itagi, Advocate i/b M/s. M.V. Kini & Co.

ORDER

Reserved on : 10.02.2017

Pronounced on: 13.02.2017

1. This Application of the Respondent to the main Petition C.P. No. 58/2014 was submitted on 24th November, 2014 before the then Company Law Board, Mumbai, thereafter transferred to NCLT. Through this Application the Applicant / Respondent has challenged the maintainability of the main Petition.

2. From the side of the Applicant, Ld. Advocate Mr. M.S. Bhardwaj appeared and narrated the background for raising this preliminary legal objection. He has informed that one Ms. Sheila Naharwar was illegally appointed vide an alleged Board Meeting claimed to be held on 8th June 2012 that too in P.D. Hinduja Hospital where one of the other Directors Mr. Peter Naharwar was admitted. According to Ld. Advocate he was a cancer patient and expired on 20th of November, 2012. According to the arguments, no such meeting was at all held because the hospital does not allow more than one visitor at a time. Hence, it was unlikely to hold a meeting claimed to have been attended by other Directors. He has further clarified that late Mr. Peter Naharwar is father of Respondent No.2 viz. Mr. Vikram Andrew Naharwar. After Ms. Sheila Naharwar

imposed herself as Director took over the control of the Company and the shareholding pattern was changed. The shareholding was reduced from 51% to 17%. Narrating the facts, it was informed that the Petitioner Company was initially having only three Directors i.e. Shri Vikram Naharwar (Respondent No. 2 of this Petition), his late father Shri Peter Naharwar and Shri Chetan Maniyar. According to his argument, there was no notice of the said alleged meeting held on 8th June, 2012 and that it was neither attended by the other two Directors i.e. Mr. Vikram Naharwar and Mr. Chetan Maniyar. In the absence of proper quorum, the decision taken was bad-in-law. He has concluded that the Petition (C.P. No.58/2014) is signed by Ms. Sheila Naharwar in the capacity as Director of the Petitioner Company. Since she was not at all a Director, therefore, the Petition is not only illegal, but void ab-initio. On the question of proper service of Notice, few case laws have been cited as listed below:-

- (a) Rajendra Prasad Rungta and Another vs RMC Med Ltd. and Others [2012] 171 Comp Cas 177 (CLB)
- (b) Eastern Linkers Pvt. Ltd. vs Dina Nath Sodhi, (1984) 55 CompaCas 462 Delhi.
- (c) Union of India vs Gwalior Polypipes Ltd. and Others [2012] 169 Comp Cas 157 (CLB)

3. From the side of the Respondents (Petitioner to the Petition No.58/2014), Ld. Advocate Mr. Abhay Itagi, i/b M/s. M.V. Kini & Co. appeared. It was informed that the Petitioner Company was incorporated as a Private Limited on 16th of March, 1962, having its Registered Office at Warden Road, Mumbai. At the outset he has

informed that the entire allegation of absence of information is baseless because Mr. Vikram Naharwal has the same address of Warden Road, Mumbai, as the address of the Company. The decision taken was in full knowledge of all the persons concerned, therefore, the appointment of Ms. Sheila Naharwar was a legal and valid appointment as a Director. The Respondent No.1 Company was incorporated on 28th January, 2003 with an initial authorised share capital of ₹1,00,000/-. At the time of incorporation, the Respondent No.1 Company had only two equity shareholders viz. late Mr. Peter Naharwar and his son Mr. Vikram Naharwar (Respondent No.2 of the Petition) holding 500 equity shares each. Thereafter, late Mr. Peter Naharwar had transferred 350 equity shares out of his holding of 500 shares in favour of Respondent No.2. Subsequently, on 27th November, 2003 Respondent No.2 transferred 510 equity shares in favour of the Petitioner No.1 Company. As a result, Respondent No.1 Company became subsidiary of Petitioner Company by virtue of holding more than 50% of the equity shares in Respondent No.1 Company. The shareholding pattern of Respondent No.1 Company after the transfer as on 27th November, 2003 was thus as under:-

Date	Name of the Shareholder	Type of Share	No. of Shares	Face Value	Percent
27.11.2003	Vikram Naharwar	Equity Shares	340	100	34%
27.11.2003	Peter Naharwar	Equity Shares	150	100	15%
27.11.2003	Amsar Private Limited	Equity Shares	510	100	51%
Total			1000	100	100%

4. The involvement of Respondent No.2 in both the Companies was significant and every decision was in the knowledge of Respondent No.2 Mr. Vikram Naharwar. According to his argument, the change in the shareholding pattern was very much in the knowledge of Respondent No.2 because the change had happened in the following manner:-

"Therefore, as per the annual return for 2012-13 the issued, subscribed and paid up share capital of Respondent No.1 was Rs.3 lakhs divided into 3,000 equity shares of Rs.100 each. The shareholding pattern as on March 31, 2011 are as under:-

Shareholder	Number of shares held	% of holding
Amsar Private Limited	510	51%
Vikram Naharwar	340	34%
Peter Naharwar	150	15%

And in contrast, the shareholding pattern as on March 31, 2012 is as under:

Shareholder	Number of shares held	% of holding
Amsar Private Limited	510	17%
Vikram Naharwar	2340	78%
Peter Naharwar	150	5%

4.1 According to his argument, the Case Laws revolving around the issue of proper service of notice has no bearing on the facts of this Case, because the Respondent No.2 was always a part and parcel of the functioning of the Company.

5. Both the sides were heard at some length. The dates of incorporation of the Petitioner Company and the respondent No.1 Company have duly been noted along with the time to time change

in the shareholding pattern. This aspect has a direct impact on the main issue as raised in the main Petition, at present sub-judice before this Bench. At this juncture, it is also worth to mention that there is another cross-petition bearing TCP No.74/MAH/2014 which was filed on 12th September, 2014 before CLB, now stood transferred to NCLT, wherein Mr. Vikram Naharwar is a Petitioner and M/s. Amsar Private Limited is the Respondent. Because of this cross-petition at this preliminary stage it is not justifiable to dismiss C.P. No.58/2014 at the very threshold, that too on a technical ground of improper authorization of the signatory of the Petition. The Applicant has challenged certain facts pertaining to the validity of a meeting held in the hospital on 8th June, 2012. This question can be answered after appreciating the surrounding circumstances and the corroborative evidences only on close examination and in-depth adjudication.

5.1 Prima facie, this is not a case of appointment of an altogether stranger as pleaded by Mr. Bharadwaj, Ld. Advocate for the Applicant. The validity of the appointment of the said alleged Director is a matter of dispute and the legal question to be decided is that whether or not her appointment as a Director was after adopting proper process of law? This legal question is yet to be decided that too after due consideration of facts and law. Even the case laws revolved around the service of notice as also the question of "proper quorum" are substantial questions; hence require proper hearing.

5.2 I, therefore, conclude that the Petitioner Company must not be thrown out of the litigation at this preliminary stage. As a result, it is hereby held that the Petition in question is "maintainable" for adjudication. Therefore, the Registry is directed to fix the date of hearing on 17th March, 2017. It is further ordered that both the Petitions (C.P. NO. 58/2014 and C.P. No. 74/2014) both shall be heard on the next date of hearing.

6. The Application stood disposed of in the terms directed above and to be consigned to record.

Sd/-

Dated: 13th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)