

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
MUMBAI

TCP Nos. 11 to 15/2013 & TCP No. 17/2013

Coram: B.S.V. Prakash Kumar, Member Judicial & V. Nallasenapathy, Member Technical

In the matter of Companies Act, 1956 under Sections 163.

And

Between:

Mr. Anilkumar Poddar (the Petitioner is common in all the TCPs mentioned below)

v/s.

1. M/s. Futura Commercials Pvt. Ltd. (Respondent in TCP No. 11/163/2013)
2. M/s. Pams Investments & Trading Co. Pvt. Ltd. (Respondent in TCP No. 12/163/2013)
3. M/s. Relcom Venture Capital Pvt. Ltd. (Respondent in TCP No. 13/163/2013)
4. M/s. Reliance Consolidated Enterprises Pvt. Ltd. (Respondent in TCP No. 14/163/2013)
5. M/s. Saumya Finance & Leasing Co. Pvt. Ltd. (Respondent in TCP No. 15/163/2013)
6. M/s. Synergy Synthetics Pvt. Ltd. (Respondent in TCP No. 17/163/2013)

COMMON ORDER

(Heard on 17.10.2016)

(Dismissed on 7. 11.2016)

The Petitioner filed these six Company Petitions (TCP 11-15 & TCP 17/2013 u/s. 163 of the Companies Act 1956) against different Companies, namely M/s Futura Commercials Pvt. Ltd. (TCP 11/2013); M/s Pams Investments & Trading Company Pvt. Ltd. (TCP 12/2013); Relcom Venture Capital Pvt. Ltd. (TCP 13/2013); Reliance Consolidated Enterprises Pvt. Ltd (TCP 14/2013); Saumya Finance and Leasing Company Pvt. Ltd. (TCP 15/2013); Synergy Synthetics Pvt. Ltd (TCP 17/2013) seeking inspection of Member Register from the date of incorporation of the Company till date and last Annual Returns for the year 2011-12, 2010-2011, and 2009-2010.

The Petitioner has remained absent, but for pleadings are complete, since the point in this case being short regarding inspection and supply of copies thereof, this Bench has decided these three cases on merits basing on the pleadings and submissions made by the Respondent Company by invoking Rule 48 of N.C.L.T r/w Explanation to Rule 2 and Rule 3 of Order 17 of C.P.C.

The Petitioner being common in all these Petitions, their reliefs being common, the counsel appearing on behalf of the Respondents being common, the pleadings in all these three Cases not being in variance, for the sake of brevity, this Bench hereby passed common order in all this Petitions.

On reading CPs 11,13,14,15 and 17 of 2013, this Bench has noticed that the pleadings of all these Petitions are same word to word, therefore, this Bench places the averments of the petitioner in all these Petitions as below: -

The Petitioner submits that he sent emails on 14.12.2012 to the Company Secretary to all the Respondents Companies for inspection of Register of Members and Annual Returns from the year 2010-11,2009-10, on his visit to the registered office of all these Companies on 26.12.2012.

Accordingly, he inspected the aforesaid two records of the respective Companies on 27.06.2012, thereafter, this petitioner again sent another email on 03.07.2012 to the Respondent companies for full copies of Register of Members and copy of Annual Returns for the years aforesaid by sending a cheque of 200 rupees towards statutory fees. Responding to the same, these Companies sent the copies of Register of Members as on 30.06.2012 and copy of annual return for the years 2009-10, and 2010-11. The petitioner, having felt that he received only incomplete documents, sent another mail on 16.12.2012 requesting these Companies to send him Register of Members from the date of incorporation of the Company to 30.06.2012, but whereas no reply came from these Companies for more than a month, then the Petitioner visited the Companies registered office on 06.09.2012 for the copies of the documents. Over his letter dated 06.09.2012, the respondent companies wrote back to him on 10.09.2012 stating that they are under no obligation to provide the full Register to him for these Companies are Private Limited Companies.

When these Companies failed to provide copies of the Register, he sent another email to the ROC concerned on 22.02.2013 to initiate prosecution against these Companies for they violated section 163 of the Companies Act and also filed these Company Petitions for supply of the copies of the Register of Members and records of the Company as per email dated 03.07.2012 and for awarding of exemplary costs against the Respondent Company.

This Petitioner filed another TCP 12/2013 against M/s Palms Investments and Trading Company Pvt. Ltd. on almost the same factual line except some variation in dates and ROC mentioning on 25.12.2012 that no action is required to take against this Respondent Company, apart from this, the relief portion and the Company giving inspection to him are all identical to the facts of the other cases mentioned above.

For the cause of action in TCP 12/2013 not being different from other cases, this Bench has included adjudication of this Petition in this Common order.

The Respondents counsel submits that they have given inspection as sought by him thereafter, provided the Register of Members as on 30-6-2012 and copy of Annual Return for the year 2010-11, and 2009-10, but this petitioner not being satiated with supply of Member of Register as on 30.06.2012, sought for Register of Members since the date of incorporation. He is neither a shareholder nor a person having interest in these Private Limited Companies, inspite of it, these Companies provided not only inspection but also the copies of the Register as on 30.06.2012 and the copies of the Annual return for the year 2010-11 and 2009-10.

The Respondent counsel submits that phrase "any other person" in Sub-Section 2(b) of Section 163 has to be read in tandem with preceding persons mentioned in Sub-Section 2(a) of the same Section. The persons mentioned in Sub-Section 2(a) being *any member or debenture holder*, it is evident that the entitlement of inspection is given to these two category of persons for the reason that their interest is involved in the Company, likewise, the same entitlement of inspection is extended to any other person who has commercial interest in the Company. The only difference between any Member or debenture holder and any other person is first category of persons are entitled for inspection without fee and as to other category of any other person, he/she is entitled to inspection on payment of fee as prescribed. For the sake of payment only, it was split into (a) and (b). Since many other persons, apart from Member and debenture holder, are happened to have commercial interest in a Company, such as Banker, Creditor, customer, etc., adding any other person has to be read in the light of doctrine of *eiusdem generis*, not otherwise. Saying so, the counsel submits that

this petitioner being not a Banker, Creditor nor any other person having commercial interest in the Company, the right provided for inspection and copies thereof cannot be invoked by the petitioner herein. In spite of it, the Respondent Companies provided inspection to the Petitioner as admitted by him, so as to remain away from this man.

In support of the above defence, the Respondents relied upon (A) *Siddeshwari Cotton Mills(P) Limited V/s. Union of India (1989) 2 SSC 458(See Paragraphs -10 to 20)*, (B) *Asst. C.C.E v/s Ramdev Tobacco Company (1991) 2 SCC 199 (See -Paragraphs 4 to 9)* (C) *In the matter of Sir Staurt Samuel (1913) A.C 514 (See- Pages 524 and 525)* to say that the preceding words control and limit the meaning of subsequent words. The expression of ejusdem generis – of the same kind or nature – signifies a principle of construction whereby words in statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words. The subsequent general words are only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to objects of wholly different kind. This is presumption and operates unless there is some contrary indication.

The counsel further submits that this petitioner is in the habit of filing cases sometimes seeking inspection, sometimes seeking copies, or both against various Companies across India causing problems to many of the listed Companies claiming that he is entitled to inspection under Section 163 or Section 219 of the Companies Act 1956. This issue has come up several times before various High Courts, in one of the cases filed by him, the Hon'ble High Court of Calcutta passed an order in *Philips Carbon Black Limited and Others V/s A.K. Poddar and Another (2011)163 Company Cases 181* holding that the Company Law Board can refuse to pass an order if the request is for corrupt purpose, if the requisite is shown to cause serious prejudice to the Company or its members or

Officers, or if the request otherwise appears to be immoral and oppose to public policy.

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The respondent counsel further submits that Section 163 (6) of the Companies Act 1956, Company Law Board has discretion as to whether to pass an order u/s 136, or not, as laid down in the Judgment supra passed by Hon'ble High Court of Calcutta.

On hearing the submissions of the respondent counsel and the pleadings of the petitioner, it appears that the word "*any other person*" cannot be taken on standalone basis to say, as the petitioner canvasses, that the person having no interest in the company is also entitled to seek inspection and copies thereof falling within the ambit of the section 163 of the old Act.

The word "*any other person*" mentioned in Section 163 cannot be construed that any person can seek inspection and supply of copies, though he has no commercial interest or any other kind of interest irrespective to the affairs of the company. A person could be called aggrieved only when such person interest is affected by the affairs of the company. Since the word "*any other person*" being preceded by the word "*member or Debenture holder*" being the persons holding interest in a company, the following word "*any other person*" cannot be said that it is extendable to the persons having no interest in the company. Apart from the Member or Debenture holder, there being several other

persons, having commercial interest in the company such as creditors, lenders, customers, employees, it can be said as referring to the category of persons mentioned above. Therefore, at any stretch of imagination, it cannot be said that this Petitioner who hasn't any kind of interest in this company cannot be said as entitled to seek inspection of the records falling in ambit of Section 163 of the Companies Act, 1956. On the top of it, these companies being Private Limited Companies, closely held by limited members, a rank outsider, like this Petitioner, cannot be permitted to have any access to the books of account. It is not even the case this Petitioner that these companies played fraud against him therefore, he wants the inspection of the records of the companies.

For the reasons aforementioned, we believe that these Companies are under no obligation to provide inspection or copies thereof u/s 163 (6) of the Companies Act, therefore they are dismissed without costs.

sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)

sd/-

V. NALLASENAPATHY
Member (Technical)