

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
MUMBAI

TCP No. 6/2013 & TCP No. 8/2013

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. Vinamra Universal Traders Pvt. Ltd. (Respondent in TCP No. 06/163/2013)
2. M/s. Dharti Investments & Holdings Ltd. (Respondent in TCP No. 08/163/2013)

COMMON ORDER

(Heard on 17.10.2016)

(Dismissed on 7.11.2016)

The Petitioner filed these two Company Petitions against different Companies, namely M/s. Vinamra Universal Traders Pvt. Ltd. (TCP No. 6 /2013), M/s. Dharti Investments & Holdings Ltd. (TCP No. 8/2013), 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 the pleadings are complete, since the point is short – regarding inspection and supply of copies thereof, this Bench has decided these two 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 the two Petitions, their reliefs being common, the counsel appearing on behalf of the Respondents being common, the pleadings in these Cases not being in variance, for the sake of brevity, this Bench hereby passed common order in all these Petitions.

The case of the Petitioner is that on 4-1-2013 by an email, he requested the Respondent Companies to provide inspection of Register of Members from the date of incorporation till date and the Annual Returns for the years 2011-12, 2010-11, 2009-10, on his visit to the Respondent Companies on 17-1-2013. He again sent

another e-mail on 19-1-2013 to the Company to provide him the documents above mentioned along with a cheque of 200 rupees towards advance against statutory fees requesting the Companies to keep the documents ready and inform the Petitioners as soon as they are made ready.

The Petitioner says that he has asked this information for he has come to know that these Companies are engaged in insider trading, but whereas these Companies rejected his request for supply of documents not to let this insider trading come out. He apprehends that these Companies are indulged in window dressing the register of Members to save the culprits from the punishment of insider trading.

The Petitioner further states that he inspected the register of Members and Annual Returns at the registered office of the company on 17.01.2013, wherein he found several irregularities in maintenance of register, so he requested the company to provide him the copy of full register of Members for he noticed that the Companies were indulged in window dressing of the register. Thereafter, he sent another email on 19.01.2013 for supply of the copies of Member Register and Annual Return as mentioned in the mail dated 19.01.2013, when copies have not been provided, he filed this CP for supply of copies and for exemplary costs for non-supply of copies of the afore mentioned.

To which the Respondent Company submits that the Respondents admittedly provided inspection, since the copies of the same are available on the website of MCA, he can avail same from that website.

The Respondents filed replies in all these Petitions with a common defence stating that this Petitioner is neither member nor debenture holder in any of these Companies, nor is a person having any commercial dealings with any of the aforesaid Companies, the Companies are therefore not required to provide either inspection or copies of any of the documents sought by the Petitioner.

The Respondent Company submits that this petitioner has filed these petitions claiming that he is entitled to seek these reliefs as a person, since Section 163 confers right upon "*any other person*" to seek inspection and supply of the documents on payment of fees as mandated under Section 163 of the Act.

The Respondents 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.

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 *eiusdem 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 Section 610(B) of the Companies Act 1956 says that the inspection of the Memorandum of Association, Articles of Association, Register, Index, Balance sheet, Return or any other document maintained in the Electronic form is available to any person as specified in the Rules. Since the Section being subsequently included in the year 2006 by making most of the documents of the Company available to the public for inspection, this Petitioner need not bother the Company or this Tribunal for seeking this relief by filing this petition. Since Section 610 (B) starts with a non-obstante clause giving free access to any person to obtain inspection and since Rules carved out under Section 610(B), confer access to the general public for these documents, he should not be allowed to bully the companies to provide inspection of the records of the company and supply copies thereof.

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.

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 163, or not, as laid down in the Judgment supra passed by Hon'ble High Court of Calcutta.

The Petitioner herein is not a shareholder in these two companies and it appears that he has no personal grievance against this Company and there being no interest to him in this Company, we believe, as argued by the Respondents counsel, that these Companies are under no obligation to provide inspection or copies thereof by invoking discretion u/s 163 of the Companies Act, therefore these CPs are dismissed without costs.

sd/-

B.S.V. PRAKASH KUMAR

Member (Judicial)

sd

V. NALLASENAPATHY

Member (Technical)