

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
MUMBAI

TCP No. 5/2013, TCP No. 7/2013 & TCP No. 9/2013

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. Darshan Securities Pvt. Ltd. (Respondent in TCP No. 05/163/2013)
2. M/s. Reliance Export Pvt. Ltd. (Respondent in TCP No. 07/163/2013)
3. M/s. K.D.A Enterprises Pvt Ltd. (Respondent in TCP No. 09/163/2013)

COMMON ORDER

(Heard on 17.10.2016)

(Dismissed on 7.11.2016)

The Petitioner filed these three Company Petitions against different Companies, namely M/s. Darshan Securities Pvt. Ltd. (TCP 5 /2013), M/s. Reliance Export Pvt. Ltd., (TCP 7/2013), M/s. K.D.A Enterprises Pvt Ltd., (TCP 9/2013) 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 and supply of copies thereof.

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 these Petitions.

The case of the Petitioner is that he sent emails on 4,1,2013 for inspection of the documents mentioned above, but the Respondent Companies have not provided inspection of Register of Members from the date of incorporation of the

Company till date and the Annual Returns for the years 2011-12, 2010-11, 2009-10. When he sent another mail dated 19.01.2013 for copies of the same along with a cheque for Rs. 200/- towards advance against statutory fee for supply of copies, then also the Companies failed to provide copies of the same. He further submits that the Company being involved in insider trading, to save the culprits involved in insider trading, the Company has not provided copies till date as asked by him. He says that the Company has indulged in gross irregularities in maintenance of Members Register, therefore, he has asked for copies of the same for the Company is under statutory obligation to furnish the documents to the petitioner within 10 working days from the date of requisition in the light of Sec. 163 of the Companies Act 1956.

In view of this, he has prayed for the above reliefs and also for exemplary costs to be paid by Respondent Companies to the petitioner.

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

The Respondent Companies submit that this petitioner has filed these petitions claiming that he, though not a shareholder, is entitled to seek these reliefs as any other 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*" having interest in the Company. The only difference between Member or debenture holder and "*any other*

person" is, first category of persons are entitled for inspection without fee and as to second category 'any other person', 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., this clause "any other person" has to be read in the light of doctrine of ejusdem 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 to "any other person" cannot be invoked by the petitioner herein.

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, this petitioner 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 have caused 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 respondents counsel further submits that there are more than 100 petitions filed by this petitioner u/s 163 or u/s 219 of the Companies Act 2013 pending before this Bench alone. All the Petitions are more or less without any reason, it is a unique tactic devised by this petitioner to bully the Companies in the country.

In view of the submissions made by the Respondents counsel prays this Bench to dismiss these Company Petitions by imposing heavy costs against this petitioner deprecating him not to file such frivolous petitions any further.

Looking at the submissions of the Respondent counsel vis-a'-vis the pleadings of the petitioner, it is an admitted position that this petitioner is not a shareholder in any of the Companies nor did he claim any commercial interest in any of these Companies, therefore, this petitioner, as rightly stated by the Respondent counsel, is not entitled to file these Petitions claiming for the section 163 permits any other person to seek inspection and supply of copies. Because the word any other person, if read along with the preceding words Member and debentures, that the word "any other person" has to be taken into count as person having commercial interest in the Company by applying the doctrine of ejusdem generis.

Since these companies are private limited companies, the parties can only get limited information, however these petitions being decided on the ground that he is not qualified u/s 163 to seek inspection and copies thereof, the effect of section 610 (B) of the Act 1956 has not been dealt with.

Accordingly, these Petitions are hereby dismissed without costs making it clear that this petitioner is not qualified to file these petitions under section 163 of the Companies Act 1956.

sd/-

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

sd/-

V. NALLASENAPATHY
Member (Technical)