

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
MUMBAI

TCP. Nos. 25 to 45/2012, TCP. Nos. 48 to 69/2012 & TCP. Nos. 93-111/2012

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. Reliance Corporate IT Park Ltd. (Respondent in TCP No. 25/163/2012)
2. M/s. Reliance Food Processing Solutions Ltd. (Respondent in TCP No. 26/163/2012)
3. M/s. Reliance Retail Ltd. (Respondent in TCP No. 27/163/2012)
4. M/s. Reliance Home Products Limited (Respondent in TCP No. 28/163/2012)
5. M/s. Reliance Retail Insurance Broking Ltd. (Respondent in TCP No. 29/163/2012)
6. M/s. Reliance Petro investment Ltd. (Respondent in TCP No. 30/163/2012)
7. M/s. Reliance Office Solutions Pvt. Ltd. (Respondent in TCP No. 31/163/2012)
8. M/s. Reliance Energy Generation & Distribution Ltd. (Respondent in TCP No. 32/163/2012)
9. M/s. Reliance Autozone Limited (Respondent in TCP No. 33/163/2012)
10. M/s. Reliance Trade Services Centre Ltd. (Respondent in TCP No. 34/163/2012)
11. M/s. Reliance Industrial Investment & Holding Ltd. (Respondent in TCP No. 35/163/2012)
12. M/s. Reliance Loyalty and Analytics Ltd. (Respondent in TCP No. 36/163/2012)
13. M/s. Reliance Convention and Exhibition Centre Ltd. (Respondent in TCP No. 37/163/2012)
14. M/s. Reliance Agri Products Distribution Ltd. (Respondent in TCP No. 38/163/2012)
15. M/s. Reliance Corporate Centre Ltd. (Respondent in TCP No. 39/163/2012)
16. M/s. Indiawin Sports Pvt. Ltd. (Respondent in TCP No. 40/163/2012)
17. M/s. Reliance People Serve Ltd. (Respondent in TCP No. 41/163/2012)
18. M/s. Reliance Polyolefins Ltd. (Respondent in TCP No. 42/163/2012)
19. M/s. Reliance Review Cinema Ltd. (Respondent in TCP No. 43/163/2012)
20. M/s. Reliance Financial Distribution & Advisory Services Ltd. (Respondent in TCP No. 44/163/2012)
21. M/s. Reliance Universal Ventures Ltd. (Respondent in TCP No. 45/163/2012)
22. M/s. Reliance Gas Corporation Ltd. (Respondent in TCP No. 48/163/2012)
23. M/s. Reliance Comtrade Ltd. (Respondent in TCP No. 49/163/2012)
24. M/s. Reliance Aromatics & Petrochemicals Pvt. Ltd. (Respondent in TCP No. 50/163/2012)
25. M/s. Reliance Retail Finance Ltd. (Respondent in TCP No. 51/163/2012)

26. M/s. Gennext Innovation Ventures Pvt. Ltd. (Respondent in TCP No. 52/163/2012)
27. M/s. Reliance Industries Investments & Holding Ltd. (Respondent in TCP No. 53/163/2012)
28. M/s. Reliance Trends Ltd. (Respondent in TCP No. 54/163/2012)
29. M/s. Reliance Universal Enterprises Ltd. (Respondent in TCP No. 55/163/2012)
30. M/s. Reliance Hypermart Limited (Respondent in CP No. 56/163/2012)
31. M/s. LPG Infrastructure (India) Limited (Respondent in TCP No. 57/163/2012)
32. M/s. Reliance Integrated Agri Solutions Ltd. (Respondent in TCP No. 58/163/2012)
33. M/s. Reliance Prolific Commercial Pvt. Ltd. (Respondent in TCP No. 59/163/2012)
34. M/s. Reliance Retail Securities & Broking Com. Ltd. (Respondent in TCP No. 60/163/2012)
35. M/s. Reliance Wellness Ltd. (Respondent in TCP No. 61/163/2012)
36. M/s. Reliance Ambit Trade Pvt. Ltd. (Respondent in TCP No. 62/163/2012)
37. M/s. Reliance Footprint Ltd. (Respondent in TCP No. 63/163/2012)
38. M/s. Mark Projects Services Pvt. Ltd. (Respondent in TCP No. 64/163/2012)
39. M/s. Infotel Telecom Ltd. (Respondent in TCP No. 65/163/2012)
40. M/s. Reliance Polymers (India) Ltd. (Respondent in TCP No. 66/163/2012)
41. M/s. Reliance Gems & Jewels Ltd. (Respondent in TCP No. 67/163/2012)
42. M/s. Reliance Chemicals Limited (Respondent in TCP No. 68/163/2012)
43. M/s. Reliance F & B Services Ltd (Respondent in TCP No. 69/163/2012)
44. M/s. Reliance Strategic Investments Ltd. (Respondent in TCP No. 93/163/2012)
45. M/s. Reliance Digital Media Limited (Respondent in TCP No. 94/163/2012)
46. M/s. Reliance Digital Retail Ltd. (Respondent in TCP No. 95/163/2012)
47. M/s. Reliance Commercial Land & Infrastructure Ltd. (Respondent in TCP No. 96/163/2012)
48. M/s. Reliance Grand Optical Pvt. Ltd. (Respondent in TCP No. 97/163/2012)
49. M/s. Rancore Technologies Pvt. Ltd. (Respondent in TCP No. 98/163/2012)
50. M/s. Reliance One Enterprises Ltd. (Respondent in TCP No. 99/163/2012)
51. M/s. Reliance Infrastructure Management Services Ltd. (Respondent in TCP No. 100/163/2012)
52. M/s. Reliance Replay Gaming Ltd. (Respondent in TCP No. 101/163/2012)
53. M/s. Reliance Personal Electronics Ltd. (Respondent in TCP No. 102/163/2012)
54. M/s. Reliance Leisure Limited (Respondent in TCP No. 103/163/2012)
55. M/s. Reliance Lifestyle Holding Ltd. (Respondent in TCP No. 104/163/2012)
56. M/s. RESQ Limited (Respondent in TCP No. 105/163/2012)
57. M/s. Reliance Dairy Foods Ltd (Respondent in TCP No. 106/163/2012)
58. M/s. Reliance Fresh Limited (Respondent in TCP No. 107/163/2012)
59. M/s. Reliance Brands Limited (Respondent in TCP No. 108/163/2012)
60. M/s. Reliance Security Solutions Ltd. (Respondent in TCP No. 109/163/2012)

61. M/s. Delight Proteins Limited (Respondent in TCP No. 110/163/2012)
62. M/s. Strategic Manpower Solutions Ltd. (Respondent in TCP No. 111/163/2012)

COMMON ORDER

(Heard on 17.10.2016)

(Dismissed on 07.11.2016)

The Petitioner filed these Petitions u/s.163 of the Companies Act, 1956 against the Respondent Companies in the respective Company Petitions seeking identical reliefs in all the Company Petitions for direction to the given Respondent Companies to provide copies of statutory Registers of the company to the Petitioner i.e. copy of full Register of Member, Annual Return of 2008-09 and 2009-10, and for exemplary costs to be paid by the Respondent Company to the Petitioner for not being given inspection as sought by him on receipt of emails sent by him.

The case of the Petitioner in all these Company Petitions is that he is a member and also shareholder of parent company Reliance Industries Ltd. or Reliance Industrial Infrastructure Ltd. He says he sent email to each company in each of the Petitions for supply copies of the Registers aforementioned by forwarding cheque for Rs. 200/- to each of the given companies towards the statutory fees. Responding to the same, each of the Companies wrote letter to the Petitioner suggesting him to download the copies of statutory registers and record from the website of the Ministry of Corporate Affairs, but the Petitioner having not satisfied with their replies, shot back to the Respondent companies saying that they were to provide the certified copies of the statutory registers and records of the company because the print out from the website will not have any authenticity or legal standing. The company, despite there being a reminder from him, had not supplied the copies of the aforesaid documents until this Company Petition was filed before this Bench. He says that the company is under statutory obligation to furnish the documents to the Petitioner within 10 working days as mentioned in Section 163 of the Companies Act, 1956. But the company, in violation of statute, failed to furnish the copies of this statutory records without assigning any valid reason, hence these petitions.

On seeing these Petitions, the Respondent companies filed their respective reply on 26.6.2012 stating that the companies already sent the copy of Register of Members and all Annual Returns of each company by a covering letter dated 28.5.2012 in compliance of Section 163. For the company having complied with the provisions satisfied with the requirements sought in the Petitions, they say these Petitions are infructuous and deserve to be dismissed. The companies say that this Petitioner is not a shareholder of any of these companies and the request made for copies is not bonafide, and it is a Petition to harass the Respondent companies. The Respondents' counsel has given past history of this Petitioner about publishing defamatory statements against Reliance Companies and its officers and thereafter filing cases against the Petitioner, in turn, this Petitioner filing cases against the company. Since these averments other than statements in relation to this matter not being relevant, they have not been dealt with in this order.

This Petitioner filed rejoinders to the replies filed by these companies saying that the he is not obliged to disclose the reason as to why he requires this voluminous information, he says that every member has right to seek copies of the Register of Member u/s. 163 of the Companies Act 1956. As to the allegation against the Petitioner that he is a chronic litigant and in the habit of filing cases, the Petitioner says that it will not tantamount to denial of his right of seeking supply of copies of documents as enumerated u/s 163 of the Companies Act, 1956. As this Petitioner also, like the Respondent, has given long chequered history about filing cases against each other, however, these facts not being relevant for adjudication of these Petitions, for the sake of brevity, this Bench has not dealt with those facts separately.

The Respondents' side, who is equally resilient, filed sur-rejoinder denying the various facts come in the rejoinder filed by the Petitioner. To prove that this Petitioner is in the habit of filing the Petitions u/s. 163 or u/s. 219 of the Companies Act, 1956 against most of reputed listed companies seeking copies of various documents of the listed companies since inception, the counsel of the Respondents placed several orders of the Company Law Board dismissing

similar Petitions moved by this Petitioner. For he will ask inspection and supply of copies of records for many years, sometimes even from the date of incorporation, these companies will obviously not in a position to provide voluminous documentation to a shareholder who has hardly one/two shares in listed companies. This sur-rejoinder only reflects denials to the assertions made in the rejoinder, therefore we believe that there is no merit in depicting entire rejoinder here.

This Bench, having seen more than 100 matters u/s 163 pending for the last four years on a short point solely from this Petitioner, has taken up these cases for hearing disregarding the delay tactics this petitioner employed.

The companies in all these Petitions are subsidiaries of either Reliance Infrastructure Industries Ltd. or Reliance Industries Ltd. Here, not only the section of law and the Petitioner, but also the ground in all the company Petitions are common and the date of requisition seeking inspection and supply of copies of the records of these companies. The Petitioner being common, the section of law being common, all these companies being subsidiaries of either Reliance Infrastructure Industries Ltd. or Reliance Industries Ltd., not only that, for the Respondent Companies in all these Petitions having supplied the Register of Members and Annual Return as sought by the Petitioner, this Bench is of the opinion that, the facts being common, one common order is suffice to deal with the common issue in all these Petitions, this Bench therefore, passes this common order in all these Petitions.

When these matters came up for hearing, this Petitioner, on 26.9.2016, has setup a ground saying that NCLT has no subject matter jurisdiction to deal with the issue falling u/s 163 of the Companies Act, 1956 for the power which conferred upon CLB u/s.163 has not been extended to NCLT in the analogous Section 94 of the Companies Act, 2013 (new Act). He says for there being no jurisdiction for NCLT u/s. 94 of the new Act, these Petitions are no more maintainable for adjudication by NCLT, therefore, sought for dismissal of the same holding that NCLT has no subject matter jurisdiction.

On this maintainability issue, this Bench passed an elaborate order on the next day i.e., 27.9.2016, holding that the issue in these Petitions is amenable to the jurisdiction of NCLT regarding the acts that happened before new Act come into force, thereby this Bench need not reiterate the reasons given in the said order. For having this Bench held that those Petitions are maintainable and ripen for adjudication, this Bench has taken up hearing to decide these Petitions on merits. Of course, the Petitioner who on that day orally agreed to make his submissions on merits on the next day to the day he argued on maintainability in the event this Bench would decide the maintainability point against him.

But, on the contrary, on the next day, i.e., on 27.9.2016, this Petitioner was not present he sent some authorized person with a long email saying that he needs 60 days to argue the Petitions on merits and by taking up one case after another. Though this Petitioner has resiled from the undertaking given to argue these matters on the following day, this Bench posted all these matters around 20 each after one week hoping that the Petitioner would argue the cases on the merits provided some time is given to him.

When these matters came for hearing after one week, these Petitioners Representative again appeared saying that the Petitioner seeking adjournment in all these matters repeating the maintainability point and 60 days' request in the email sent by the Petitioner directly to NCLT. By experiencing the conduct of the Petitioner, it has become clear to this Bench that this Petitioner sends left and right emails to the Bench, whenever it is not convenient to him to obtain adjournment from this Bench, and he will remain easing by sending somebody else to take adjournments. Having this Bench realized if this Bench succumbed to these kinds of tactics, these matters will remain on the file of NCLT for many more years for solely letting this Petitioner to keep this litigation pending against various companies, not only that, piling up pendency in NCLT for no reason.

It is needless to say that this Tribunal normally adjudicates cases basing on the pleadings and affidavits filed by the parties, if the Petition, reply and rejoinders come on record, this Bench construes that case is ready for oral

submissions basing on the affidavits field by the parties. Here Respondents have even filed sur-rejoinders to the rejoinders.

This Bench, rarely, takes up oral evidence to dispose of the cases. Though no party is expected to include legal arguments in the pleadings, this Petitioner went ahead discussing various citations to cover even legal arguments in the pleadings filed by him. So practically nothing is left to the parties for adducing in this case except advancing arguments. Since the facts are not in dispute, the point left to be decided is whether reliefs sought by this Petitioner are to be granted or not.

To clarify whether this Bench can take up with this matter for hearing in the absence of effective arguments of the Petitioner, this Bench relies upon order 17 of CPC to decide whether this Bench can proceed with the case as if such party were present.

When an adjournment is sought by a party, what is the recourse available to the Court is mentioned in Order 17 of CPC.

For the sake of clarity, the text of Rule 2 and 3, order 17 is placed below:

2 ***Procedure if parties fail to appear on day fixed*** — *Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.*

[Explanation, — Where the evidence or a substantial portion of the evidence of any party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present].

[the above Explanation has been inserted by Act 104 of 1976, S.68 (w.e.f. 1.2.1977)]

3. ***Court may proceed notwithstanding either party fails to produce evidence, etc.*** — *Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, [the Court may, notwithstanding such default, —*

- (a) *if the parties are present, proceed to decide the suit forthwith; or*
- (b) *if the parties are, or any of them is, absent, proceed under rule 2.]*

On comprehensive reading of above two Rules and also order 9 of CPC, it is evident that the mandate of the statutes is not to delay the disposal of the cases merely on seeing adjournment requests made by the parties. Court is generally limited to pass default judgements when pleadings are not complete. When pleadings are complete, facts are placed on the platter of the court, if adjournment is asked by the parties for their own reasons, court need not restrain itself from passing judgement or order, as the case may be. It can either proceed with the case as if such party were present, when substantial portion of evidence is recorded as mentioned under Explanation to Rule 2, and fails to perform any other act necessary to the further progress of the suit, the court may, notwithstanding such default, proceed to decide the case forthwith or proceed with u/r 2 or as enumerated u/r 3 of Order 17.

The pleadings are complete, the facts of either side not being denied, the Petitioner having included the citations supporting his contentions, even if it is construed that this Petitioner is absent, this Bench may proceed to dispose of this matters basing on the explanation given to rule 2 of order 17.

If it is assumed that his representative appearing before this Bench as Petitioner presence, and the Petitioner having failed to advance his side oral arguments then also by invoking rule 3(a), this Bench can proceed to decide these cases forthwith.

On giving careful reading to Explanation to Rule 2, it only talks of completion of adducing factual aspects, not talking of adducing oral arguments or written arguments. It is therefore, clear that once factual aspect, that is assertions and denials is complete and such facts are not being disputed by either side, court is at liberty to decide the case basing on the facts available in the case. Here, since this Petitioner has already included his arguments and legal propositions in his rejoinder itself, practically these matters are ready for adjudication even when any of the parties fail to present or fail to argue the case.

On seeing this Petitioner dragging out these cases to remain pending, this Bench is constrained to dispose of these matters basing on the pleadings and the proposition of law mentioned by either side (the Petitioner discussed legal propositions in his rejoinder).

Accordingly, these matters are being decided as follows:

In the relief portion, the Petitioner in all these TCPs has asked copy of Register of Members and Annual of Return for the year 2009-2010 and 2008-2009 from each company and for exemplary costs for inspection being denied to him.

To which the Respondent Counsel has categorically submitted that on 28.5.2012, these companies forwarded copies of Annual reports for the year 2008-09 and 2009-10 but whereas this Petitioner stated in his rejoinders that the Respondents provided incomplete copies of Register of Members.

The Counsel on behalf of the Respondents submits that this Petitioner filed 62 TCPs against Reliance Industries Ltd. and its subsidiary group companies under this section of law, on seeing such large number of Petitions, in order not to get into unnecessary litigations, the Respondent companies, on 28.5.2012 furnished copies of the Register of Members up to 31.3.2012 and copies of the Annual Returns of 2008-09 and 2009-10, in spite of it, this Petitioner has not withdrawn these petitions against these companies, still hanging on this litigation saying that copies sent to him are incomplete. The Counsel submits this Petitioner is not even a shareholder in any of these subsidiary companies of Reliance Industries Ltd. and Reliance Industrial Infrastructure Ltd.

The Counsel, relying upon **M/s. Siddeshwari Cotton Mills Pvt. Ltd. v/s. Union of India & An (1989) 2 SCC 458**, submits that the meaning of any other person has to be understood in the line of preceding words in the statutory provision. It is mentioned that the company documents shall be open to the inspection (a) of any member or debenture holder, without fee and (b) of any other person on payment of each inspection. Since other two category of persons preceding to "**any person**" being the persons having interest in the company, the word following the persons having interest in the company must also be the person having interest in the company or connected to the company in one or

other way. The persons enumerated as member and debenture holders are the persons having interest in the company, it can't therefore be understood that the word "**any other person**" include persons not having interest in the company. It goes without saying that there are other persons who have business interest in a company, such as creditors, investors, and the people having stake in the company. The Petitioner being a rank outsider to the company, not falling in class of persons such as creditors, investors, etc., the Petitioner cannot claim his entitlement to seek inspection or copies under the cover of word **any other person**. In the citation supra, it has been reiterated that ejusdem generis is applicable to say that the preceding words will sometime expand the scope of word following them or sometimes limit the scope of the word following them. But one thing is certain that the meaning of the following word is always to be taken out in the line of the meaning that comes out of the words preceding it. Since the word "any other person" is preceded by the member and debenture holder, "any other person" means only the person interested in the company not a person having no interest in the company.

Whenever any parties seek relief on the ground that his right is denied, it has to be seen in the context in which the right is created. This right of providing inspection and supply a copy is really meant for the persons whose interest is involved in the company. Since fiduciary duty is cast upon the company to maintain transparency to its members and others whose interest is intricate to the company, perhaps this provision is devised to keep such persons informed. It is not a fundamental right available to everybody. It is a right limited to the person connected to the company not to the people having no interest in the company. Moreover, this Petitioner has nowhere stated what is the injury he is likely to sustain in case copies of the documents are not given to him. May be because of this reason, the statute has categorically stated the Register shall remain open to person mentioned in section 163, but when it comes to the CLB granting relief, the discretion is given to CLB whether to grant such relief or not by saying the Tribunal "*may also, by order compel immediate instructions or direct for supply of copies*". This Petitioner nowhere stated that what for he required these copies

of documents. In most of the Petitions, he asked inspection of documents of the company since inception of that company u/s 163. If section 163 and 164 are the sections following after Annual Returns chapter and preceding the chapter of Meetings and Proceedings, on seeing the placement of this chapter in between the chapter of Annual Returns and the chapter of Meetings and Proceedings, it is evident that the members and debenture holders and any other person interested in the companies are being given a window to know the happenings in the company before attending to AGM. This Petitioner has no shareholding in the company, therefore, he will not get any occasion to attend Annual General Meetings of the company or any of the meeting of the company to question the acts of the company. So this Bench does not see any purpose in granting such a relief to a stranger to the company because by giving a conjoint meaning of the person mentioned in sub-section 2 of Section 163 – member or debenture and of any other persons, this Petitioner will not fall under any of the above three classes of persons, therefore, this Petitioner is not entitled to seek this relief u/s.163.

However, the Respondents to avoid getting entangled in litigation, they already provided copies of documents asked by this Petitioner, in spite of it, he has stubbornly been harping on the relief sought by him.

For the reasons stated above, this Bench having noticed that this Petitioner is in the habit of raising frivolous litigation again many of the listed companies either by subscribing one or two shares or under the head of “any other person” u/s.163 by asking inspection of the documents from the date of inception of the companies. Knowing fully well, that it will not be possible to provide inspection of the documents from the date of inception, when the company failed to provide inspection or supply of copies, he files Petitions u/s. 163 or sec. 219 of the Companies Act, 1956. If any company says copies are provided as sought by the Petitioner, he will start arguing for exemplary costs for not providing inspection in the period mentioned in the statute.

Since this Bench has noticed that he is not a qualified person u/s.163 to seek inspection, this Bench hereby dismisses all these 62 Petitions by imposing cost of Rs. 1000/- each in every TCP i.e. TCPs 25-45/2012; TCPs 49-63/2012; TCPs

93-111/2012 payable to NCLT within 30 days for consuming valuable time of this Bench on this frivolous and vexatious litigation.

Accordingly, these Petitions are dismissed with costs as mentioned above.

sd/-

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

sd/-

V. NALLASENAPATHY
Member (Technical)