

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
T.C.P. NO.56/397-398/CLB/MAH/2011

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

In the matter of Sections 397, 398, 399, 402, 403 & 406 of the
Companies Act, 1956.

Between

1. Shri. Paras S. Porwal
2. Smt. Manju P. Porwal

.... **Petitioners**

And

1. M/s. Blue Lotus Jewellery Pvt. Ltd.
2. Shri. Dikesh Amrital Jain
3. Shri. Kishorekumar M. Jain
4. Shri. Navinkumar M. Jain
5. Shri. Pravinkumar M. Jain.
6. Smt. Alka D. Jain
7. Smt. Devika N. Jain
8. Smt. Nitika P. Jain
9. Smt. Shantibai Jain
10. Shri. Navin M. Jain (HUF)
11. Shri. Kishore M. Jain (HUF)
12. Shri. Praveen M. Jain (HUF)
13. Shri. Mishrimal Umedmal Jain (HUF)

... **Respondents**

Petitioners' Counsel: Mr. Jaideep Mitra, Advocate for the Petitioners.
Respondents' Counsel: Mr. Kedar Wagle, Advocate for the
Respondents.

ORDER

(Heard & Pronounced on 05.01.2017)

The Petitioners, holding 24.86% shareholding in the company, filed this Company Petition against R1 Company, namely Blue Lotus Jewellery Pvt. Ltd. and other answering Respondents u/s. 397, 398, 399, 402, 403 and 406 of the Companies Act, 1956 assailing the conduct of the Respondents as prejudicial to the Petitioners.

2. The case of the Petitioners in brief is that R4, who was close friend of 1st Petitioner, approached him stating that they wanted to diversify R1 business to get into the real estate business of re-development. Since R1 had no infrastructure and financial liquidity to start the business of real estate, the management in R1 requested P1 to buy sizable shareholding of R1 Company, on such a request, the Petitioners agreed to provide financial support to R1. In pursuance thereafter, P1 identified a plot of land called "Shirin Manzil" admeasuring 1168.07 sq. metre occupied with a building housing 43 tenants. To support R1 to get into real estate business, P1 & P2 invested ₹2.5crore each towards purchase of 2, 00,000 shares each of ₹10 per share at a premium of ₹100, the Petitioners were allotted 2,00,000 shares each on 1.3.2007. Soon thereafter, P1 initiated talks with the owners of the aforesaid property, for the owners being convinced to sell the property; accordingly P1 initiated process to purchase the said property in the name of the company. On 3.3.2007, both the Petitioners advanced ₹2.5 cr. each to R1 Company as a loan on interest which was agreed to be returned later. Out of it, only ₹2crores have been paid back, remaining 3crores is shown as payable to the Petitioners in the books of the company.

3. In the meanwhile, the Company acquired the property for a sum of ₹5.5crores basing on the negotiations initiated by P1 and conveyance was executed 6.3.2007 between the Company and the Owners. On 14.1.2008, a Partnership, namely M/s. Shanti Constructions was formed with two Partners i.e. R4 and Om Shanti Universal Ltd. wherein P1 is one of the Directors and shareholders of the said Company. R1 Company, through P1, entered into a

Development Agreement on 27.2.2008 with the Co-operative Society of the Tenants of Shirin Manzil. To get vacant possession of the Shirin Manzil, the Petitioners arranged the payment of ₹1.01crore towards the rent payable to the respective tenants for their alternate accommodation. Thereafter, R4, on 3.8.2010 retired from the Partnership Firm Shanti Constructions and started his own Firm called M/s. Mishal Constructions. Since R1 Company was not interested in real estate business, the company on 18.8.2010 agreed to sell the property Shirin Manzil to M/s. Shanti Constructions for an amount of ₹8.25crores, out of which, ₹5.65crores was already paid to the company between 20.8.2010 and 23.8.2010. When the Shanti Constructions tendered final Conveyance document to R1 Company, it has refused to execute the Conveyance. For the Petitioners being aggrieved of the Respondents denying execution of Conveyance, M/s. Shanti Constructions filed a suit before the Hon'ble High Court of Bombay seeking of decree of specific performance of a contract entered into with R1 Company on 18.8.2010.

4. The Petitioners submit that they have not been given any notice of General Meetings held on for the Financial Years 31.3.2007, 31.3.008, 31.3.2009 & 31.3.2010. When the Petitioners addressed a letter to the company on 7.3.2011 for inspection of statutory records, the company failed to reply to the letter seeking inspection of the documents. On the search made by the Petitioners on 9.3.2011 with the ROC, Maharashtra, it was noticed that as if Meetings were held every year on or before 30th September of the respective years, Registered office of the company was shown as changed from A/225 Keval Industrial Estate, B Marg, Lower Parel, Mumbai – 400013 to

the present address and R2 & R4 have been shown resigned as Directors of the company with effect from 1.2.2011. Since inspection was not given, the Petitioners submit that they sent another letter for inspection on 21.5.2011, but no reply has come from the company.

5. The Petitioners submit that the company has collected share Application money of ₹2.5crore each from the Petitioners on 8.8.2006 showing net worth of the company at the rate of ₹100 premium per share as on the date of Application. At the same time, R1 Company issued Bonus Shares to other Shareholders at the ratio of 12:1 pending receipt of share application money of ₹2.5crore each from the Petitioners, this clearly shows that the net worth of the company was inflated to make the Petitioners invest in the company at the rate of ₹100 premium per share by falsely showing higher net worth which amounts to misappropriation of the funds of the company. The Petitioners submit that the Promoters and its associates have only brought ₹92.30 lakh towards the Share Capital for allotment of 12,90,000 equity Shares to themselves, whereas the Petitioners were made to pay ₹4.4crore for allotment 4,00,000 shares. They further submit R4 & R5 were appointed as Additional Directors on 1.9.2009, but they were not shown as appointed as Directors in the AGM held on 30.9.2009 which is in violation of section 260 of the Companies Act, 1956. They submit that for they have noticed mismanagement in the company, they further sought for inspection of the documents but they have not been provided, hence the Petitioners submit that the acts of the majority shareholders i.e. answering Respondents acts are harsh, burdensome and oppressive against the interest of the Petitioners hence this Petition.

6. In reply to the Petition, the Respondents submit that P1 has filed a suit for specific performance over the alleged Agreement purporting to have been executed by R1 Company agreeing to transfer "Shirin Manzil" property to the Partnership Firm owned by first Petitioner and others. The present Petition is nothing but an offshoot to the dispute pending between the Petitioners and answering Respondents in relation to the specific performance suit filed by the Petitioners. The Respondents further submit that P1, holding himself out as the Director of the company in the Agreement entered with the Tenants of "Shirin Manzil" without any authorization from the company. The Respondents submit that the petitioners have never been made as directors and it is not the case of them that they acted as directors of the company, that being so, he could not have behind the back of management entered into an agreement with the tenants showing himself as director of the company. The Respondents further submit that R1 company has /had no intention to sell the property which is the subject matter of the suit for the specific performance. Having the Petitioners failed in usurping the property "Shirin Manzil", the Petitioners forcibly tried to trespass into the property and occupy it, to protect the interest of the company; the respondents were compelled to give a Police complaint on the efforts of P1 to seize the property illegally from the company. When the Police failed to take action, R1 Company filed a Criminal Writ Petition before Hon'ble High Court of Bombay, wherein Public Prosecutor undertook to get ensure crime registered against P1 in respect to the Police Report given by R1 Company. They further submit purchase of the shares by the Petitioner in R1

company was solely on the basis of commercial consideration and not connected with the business of real estate or redevelopment as alleged by the Petitioners. They submit that the Directors of R1 company were already in the business of redevelopment, as such their experience was enough to hand real estate business, moreover P1 is neither an Architect nor a Civil Engineer, therefore, P1 could not brag out as if, his experience fetched the company in buying the property "Shirin Manzil" by R1 company. The Respondents deny that the Petitioners paid loan to R1 Company for the purpose of investing in redevelopment. The Respondents submit that the registered office of the company was shifted for convenience of business operations, and since shifting of registered office is within the city of Mumbai, the question of intimation does not arise. They further submit that the Petitioners should not be concerned with the issuance of Bonus shares since those Bonus shares were issued to the shareholders before the share application money of the Petitioners came into the company. They submit that these Petitioners invested in the company after due diligence therefore, they could not raise all these issues after a lapse of five years from the date of allotment, hence the Respondents submit that this Petition is liable to be dismissed for this Petition is bereft of specific allegations and supporting documents thereof.

7. The Petitioners filed rejoinder and thereafter the Respondents sur-rejoinder more or less reiterating the same facts that they canvassed in the Petition and the reply.

8. To fortify the pleadings of the respective parties, the Counsel on either side vehemently argued on the pleadings advanced.
9. On hearing the submissions of either side, the point for determination is whether the averments of this Company petition and the material supporting the company Petition fall within the ambit of Section 397, 398 of the Companies Act, 1956.
10. The Petitioner Counsel elaborately pleaded over execution of an Agreement in favour of M/s. Shanti Constructions by R1 company, but when it has come for argument, he has only argued that the act of shifting registered office, over non-issuance of notices to the Petitioners, alleging AGMs held without notice to the petitioners, over issuing Bonus Shares to the remaining Shareholders after the Petitioners agreed to invest in the company, and over denial of supply of records of the company to them.
11. To which the Respondents Counsel has given an explanation stating that these Petitioners have never been made as Directors of the company, since the Petitioners themselves residing in the same building for considerable period, every AGM held in the company was within the notice of the Petitioners. The Petitioners have never raised that notices have not been served upon them until before they filed specific performance suit before Hon'ble High Court of Bombay. P1 himself being a businessman and calling himself as an experienced man carrying real estate businesses and admittedly managing affairs of his companies, it can't be said that first Petitioner was not aware of the company holding Annual General Meetings for the last five years. Moreover, these Petitioners have not

revealed anywhere in the Petition what prejudice has been caused to them by not being served notices of the AGM upon them and they have not said anywhere that the Respondents approved Resolutions in the said AGM detrimental to the interest of the Petitioners.

12. As to shifting of the registered office, the Respondent gave an explanation that shifting is within the city and the place where the office shifted is close to the business operations, here also it was not said what prejudice has been caused to the petitioners by shifting of the registered to the new address.

13. The Petitioners though mentioned that Bonus Shares were issued to the remaining shareholders except the Petitioners at the ratio of 12:1, they have not said anywhere in their Company Petition when these Bonus shares were issued, whether they were issued before the Petitioners coming to this company as shareholders or subsequent to their coming into the company as shareholders, they have not even filed any document showing that Bonus shares were issued to the other shareholders on the date or subsequent to their coming into the company as shareholders enabling this Bench to locate whether Bonus Shares were issued after the Petitioners have become shareholders of the company. Whenever the pleading of this kind have been taken out, it is the duty of the asserting party to give the particulars reflecting malafide act of the answering party and the documents supporting thereof, here neither a pleading nor a document to show that Bonus shares were issued subsequent to the Petitioners coming into the company so as to cause loss monitory shareholders, therefore, we are of the opinion that this Bench is

under no obligation to entertain this plea. Accordingly, this issue is decided against the Petitioners.

14. As to the non-supply of documents to the Petitioners, the Respondents submit that the Petitioners are only shareholders, they have an entitlement as shareholders to get copies of the documents of the company as envisaged u/s.209 of the Companies Act, 1956. The answering Respondents wrote a letter to the petitioners saying that they are ready to provide documents other than what was provided to P2, if the petitioners show the respective section entitling them to ask for inspection of other documents. To this letter dated 7.9.2011 addressed to the Chartered Accountant of P2, there is no reply from the Petitioners, hence it cannot be said that the Petitioners refused to provide the copies of the documents as sought by the Petitioners. That apart, here also the Petitioners have not revealed what prejudice has been caused to the Petitioners by non-supply of copies of documents sought by the Petitioners. The Respondent Counsel also expressed an apprehension that since the Petitioners themselves carrying real estate business, if inside information is given to them, it would be prejudicial to the company rather to the Petitioners. The Petitioners have not even disclosed that the Respondents refused to show some documents which are likely to cause or causing prejudice to the Petitioners, therefore, qua non-supply of documents cannot be attributed as an act oppressive against the Petitioners, hence this point is also decided against the Petitioner.

15. To justify this contention, the Respondents relied upon a citation in between *Chander Krishan Gupta v/s. Pannalal Girdharilal Pvt. Ltd. & Ors. (1984) 55 Comp Case pg.702 (Delhi High Court)* to say non-maintenance of Register of Assets or other books and non-holding Board meetings are not acts of oppression within the meaning of Section 397. It goes without saying it has already been repeatedly reiterated by the Constitutional Courts that merely an act being in violation of the provisions of the Companies Act, will not amount to an oppressive act unless it is laced with malafide intention to cause prejudice to the interest of the members complained of. Here the Petitioners have only stated that non-supply of copies amounted to oppressive act without stating what prejudice has been caused by non-disclosure of copies of documents.

16. The Petitioners relied upon a citation in between *Rajdhani Roller Flour Mills Pt. Ltd. vs. Mangilal Bagri and ors. (Delhi High Court - DB (1991) 70 Company Cases Page no. 788)*, to say that the right of obtaining copies of accounts cannot be denied to the Shareholders because the books of accounts only will help to establish the misdeeds allegedly taken place in the company. No doubt it is true that the Petitioners in a petition u/s.397, 398 are entitled to accounts notwithstanding the limited rights available to them u/s.209 of the Companies Act, 1956, but this remedy is available to such shareholders who are entitled to inspect the documents relevant to the material facts mentioned in the petition because documents are necessary to decide as to whether oppression and mismanagement is there or not. Here these Petitioners say that non-supply of documents itself is an oppressive act without even

mentioning how their interest is affected by non-supply of documents to which they have no entitlement to ask for copies. Is it the case of the petitioners that the Respondents siphoned the funds of the company or the respondents altered the shareholding pattern causing change to the shareholding of the petitioners, or done something that diluted the net worth of the company? No material fact is set out by the petitioners saying that such and such facts are oppressive and evidence to the effect would be by inspection of such and such documents, there is no such pleading in the case of the petitioners. Moreover, it is a discretionary relief and it could be passed only when the petitioner shows that their case cannot be decided unless and until so and so document is brought on record. Therefore, the point canvassed by the Petitioners deserves no merit. Moreover, the citation supra is over a short point in an Appeal over non-supply of documents in the petition pending under sec. 397, 398 of the Companies Act, 1956 and finally it has been held that since inspection had already been given, the appeal was dismissed, therefore we believe that this citation is not applicable to the given facts.

17. In *Mohta Bros. (P.) Ltd. and Ors. vs Calcutta Landing and Shipping Co.* (1970 40 Comp Cas 119 Cal), it has been held that the petitioner must set out the facts which constitute acts of mismanagement, misappropriation, fraud or oppression and prove, prima facie, at any rate, that on those facts an investigation is called for, and if the petitioner fails to set out the facts and produce satisfactory proof in support of those facts no order for investigation

into the affairs of the company can be made, nor can any relief be granted to the petitioner.

These petitioners have already filed a suit for specific performance and it is pending, therefore the order passed in this case will not have any bearing on the suit already pending. If any interim order is pending in this case, the same stands vacated by dismissal of this Company Petition.

For the reasons stated above, this Company Petition is hereby dismissed with costs.

Sd/-

B.S.V. PRAKASHKUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)