

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh
Hon'ble Member (J)

Shri S. Vijayaraghavan
Hon'ble Member (T)

Company Petition No.49/2016

In the matter of :

The Companies Act, 1956 / Companies Act 2013
And

In the matter of :

Sections 235, 397, 398, 399, 402, 406 and 407 of the Companies
Act 1956, and Sections 58 and 59 under the Companies Act, 2013
And

In the matter of :

Goldstar Enclave Private Ltd., a company incorporated under the
provisions of the Companies Act, 1956 and having its registered office at
26, Strand Road, Kolkata – 700 001, presently at 8, Old China Bazar
Street, 1st floor, Room no.101, Kolkata – 700 001
And

In the matter of

1. Devinder Singh Shant, Kolkata
2. Jasjit Pal, Kolkata
3. Neelu Singh, Kolkata

....Petitioners

-Versus-

1. Goldstar Enclave Private Ltd.
2. Deepak Kumar Daga, Kolkata
3. Kanak Mall Banthia, Kolkata
4. Randhir Kumar, Kolkata
5. Dipak Kumar Rathi, Kolkata
6. Aztec Conglomerate Private Limited, Kolkata
7. ACP Financial Consultants Private Ltd., Kolkata
8. Champalal Jaichandlal Private Ltd., Kolkata
9. Cornation Traders Private Ltd., Kolkata
10. Corus Steel Private Ltd., Kolkata
11. Diksha Suppliers Pvt. Ltd., Kolkata
12. Epoch Mercantile Private Ltd., Kolkata
13. Ghilomanuddin Saudagar, Kolkata

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14. Goodview Vintrade Private Ltd., Kolkata
15. Janpack Suppliers Pvt. Ltd., Kolkata
16. Kushal Infotech Pvt. Ltd., Kol.
17. Lemongrass Dealtrade Pvt. Ltd., Kol.
18. Mahadev Tradecom Pvt. Ltd., Kol.
19. Maharaja Vanijya Pvt. Ltd., Kolkata
20. Matribhumi Commodities Pvt. Ltd., Kol.
21. Maximum Financial Advisory Pvt. Ltd., Kol.
22. Minerva Textiles Pvt. Ltd., Kolkata
23. Ontime Merchandise Pvt. Ltd., Kolkata
24. Proper Dealcom Pvt. Ltd., Kol.
25. Ramdeo Business Pvt. Ltd., Kol.
26. Ranjeet Singh, New Delhi
27. Ridhi Sidhi Commotrade Pvt. Ltd., Kolkata
28. Shanti Dealers Pvt. Ltd., Howrah
29. Shree Tulsi Realty Pvt. Ltd., Kolkata
30. Silverpoint Infratech Pvt. Ltd., Howrah
31. Solty Suppliers Pvt. Ltd., Kolkata
32. Suryodya (India) Pvt. Ltd., Kolkata
33. Sunraj Comtrade Pvt. Ltd., Kolkata
34. Manav Sales Pvt. Ltd., Kolkata
35. Subham Cements Pvt. Ltd., Kolkata
36. Seabird Abasan Pvt. Ltd., Kolkata
37. Subdhan Merchants Pvt. Ltd., Kolkata
38. Chinmoy Ghatak, Kolkata
39. Derasary Kishan Kumar, Kolkata.

.... Respondents

Advocates on Record:

- | | |
|---------------------------|----------------------------------|
| 1. Mr. Sidhartha Sharma |] For Petitioners |
| 2. Mr. Joydeep Dutta |] |
| | |
| 1. Mr. N. Dasgupta |] |
| 2. Mr. A. Biswas |] For Respondent no.38 |
| | |
| 1. Mr. D. N. Sharma |] |
| 2. Mr. Shwetaank Nigam |] For Respondent nos.2,33 & 35 |
| 3. Ms. Debjani Chatterjee |] |
| | |
| 1. Ranajit Ray |] For Respondent no.39 |
| | |
| 1. Mrs. Manju Bhuteria |] |
| 2. Mr. Saubhik Chowdhury |] For Respondent nos.3,8,34 & 37 |
| 3. Ms. Meenakshi Manot |] |

Date of Concluding the hearing : 22.12.2016

Date of Pronouncing the Order : 17.1.2017

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ORDER

Per Sri Vijai Pratap Singh, Member(J)

The petitioners have filed C.P. 49/2016 complaining of several acts of oppression and mismanagement perpetrated by respondents in relation to affairs of Goldstar Enclave Pvt. Ltd.

Brief facts of the case are that Goldstar Enclave Private Ltd. (hereinafter referred to as the 'Company') was incorporated on 27th May, 2011. The petitioners were promoters and original subscribers to the Memorandum and Articles of Association of the company and initially the petitioners controlled 100% shareholding in the said company. In the year 2011, the petitioner no.1 came to know that Globe Cinema Hall was being sold. Realising the viable business opportunities in acquiring and promotion of the said cinema hall premises in the constructed areas for the shopping complex cum multiplex, the petitioner no.1 had incorporated the company on 27th May, 2011. The petitioners invested in the company and also arranged for funds through companies and entities for the purpose of acquiring the said Globe premises.

Since the year 1990, the petitioner no.1 was very closely associated with Shri Meghraj Daga who was a Chartered Accountant and partner of a firm by the name of S.M. Daga & Co. M.R.Daga was a close friend of petitioner no.1 and was also Financial and Tax Consultant of petitioner no.1 and petitioners reposed complete faith and trust in M.R. Daga in connection with all their financial matters. M.R.Daga firm was also statutory auditor of the company since the inception of the company. R-2 is the son of late Shri M.R. Daga who is also a Chartered Accountant. He also became close and trusted Advisor to the petitioners in relation to all financial matters.

In order to acquire the Globe Cinema premises, the petitioners and M.R.Daga agreed to participate in a joint venture and in order to acquire globe premises from its owners. 50% of the premises was acquired by P-1, P-2 and

P-3 in the name of the company Goldstar Enclave Private Ltd. and the balance 50% was acquired in the name of Dhansri Abasan Private Ltd. (hereinafter referred to as Dhansri), which was a company owned and controlled by Daga family and the Jain family. The acquisition of Globe premises was made by a deed of conveyance dated 09.07.2011 whereby the company and Dhansri, at the time of acquisition of the said Globe premises, was owned and controlled by P-1, P-2 and P-3 and Dhansri was owned and controlled by Daga and Jain family. Both the parties were equal partners in the said premises. At all material times, the petitioners have stated that P-1, P-2 and P-3 held and controlled 100% shareholding in the company and were also the only directors of the company. The petitioner company Goldstar needed funds for which the petitioners caused allotment of shares wherein 96,660 equity shares of Rs.10/- each were allotted in favour of the petitioners on 20.01.2012. In addition to this allotment of 9,47,000 equity shares of Rs.10/- each at a premium of Rs.90/- per share to respondent nos. 6 to 32 on 31.01.2012. Pursuant to the said allotment of shares, the P-1, P-2 and P-3 jointly held 50% shares of and in the company i.e. majority shareholding and also continued to be the only directors. R-6 to R-32 were minority shareholders and they did not have any representation on Board of Directors of the company. In 2013, Mr. M.R.Daga died and R-2 who was the son of Mr. M.R. Daga and also a Chartered Accountant by profession replaced M.R. Daga as the Financial Advisor to P-1, P-2 and P-3. The petitioners were having complete faith and trust in R-2.

The petitioner has also contended that 9,90,000 equity shares of Rs.10/- each were further allotted in favour of P-1 and P-2 at the Board meeting of the company held on 15th March, 2013. Resultantly, total shareholding of the petitioners in the company came to be 67.49%.

The only business of the company was and is dealing with the construction and sale of shops and rooms in the land/premises of Globe Theatre, 50% of which belonged to the company. Several shops and rooms at the said premises were sold to third parties jointly by the company and Dhansri,

in view of their equal joint share in the same. The consideration received in such regard was also equally distributed between the petitioners and Dhansri. The business of the company was functioning smoothly under the management of P-1, P-2 and P-3 and there was never any cause for them to suspect any wrongdoings by R-2 or any other person in relation to affairs of the company. As per the averment of the petition, 9,90,000 shares which were allotted to petitioner nos. 1 and 2 was illegally cancelled on March 15, 2013 and 4,30,000 shares held by the P-2 in the company and 2,35,000 shares held by P-3 in the company (total 6,65,000 shares) were somehow illegally shown to be transferred to R-13, who was never a shareholder or connected to the company in any manner. R-2, R-3 and R-4 and later on R-5 were all allegedly appointed as directors of the company on March 26, 2014. P-2 and P-3 were shown to have allegedly resigned as directors on April 2, 2014. P-17 allegedly was removed as director on September 4, 2014. Registered office of the company was allegedly shifted to 8, Old China Bazar Street, Kolkata on July 31, 2014 and large percentage of shares held by R-6 to R-32 were allegedly shown to have transferred to R-34 to R-37.

Resultantly, the petitioners shareholding in the company had been illegally brought down from approximately 67% as on March 15, 2013 to less than 17% and P-1, P-2 and P-3 had all been allegedly removed or shown to have ceased to be the directors of the company. The petitioners have further alleged that all these acts were done at the instance of R-2 by manipulating and forging documents and also by taking advantage of good faith and trust reposed in him by the petitioners. The petitioners have claimed that the R-2 was a Chartered Accountant of the petitioners and he has misused the trust and faith reposed in him by the petitioners and had committed grave acts of oppression and mismanagement prejudicial to the interest of the company and the petitioners. Therefore, the petitioner has filed this petition under section 235, 397, 398, 399, 402, 406 and 407 of the Companies Act, 1956 and section 58 and 59 of the Companies Act, 2013 and has also prayed for interim order praying that a Receiver be appointed for making inventory of all assets and

properties of the company, making inventory of all books and accounts and other records of the company and prayer has been made for framing a scheme for management and administration of the respondent no.1 company. The petitioner has also sought injunction for restraining the respondent nos. 2,3 and 5 for acting as directors of the company or representing themselves as directors or representing themselves in the company in any manner whatsoever.

The respondents have denied the allegations levelled by the petitioners and have stated that it is wrong to say that the registered office of the company has been illegally shifted to 8, Old China Bazar Street, Kolkata. The petitioners did not raise any objection in relation to shifting of office. The petitioners were also present in the Annual General meeting held on 24th September, 2014 at the registered office situated at 8, Old China Bazar Street, Kolkata. The respondents have also denied this fact that the share capital of the company is Rs.3,91,36,000/- divided into 39,13,600 equity shares of Rs.10/- each. The respondent no.2 has claimed that subscribed and paid up share capital of the company is Rs.1,92,36,000/- divided into 19,23,600 equity shares of Rs.10/- each. The respondent no.2 has also denied and disputed that the shareholding of the petitioners represents 67.49%. The respondent no.2 has further claimed that the present shareholding of the petitioners is only 16%.

The respondent no.2 has further stated that on 23rd February, 2012 in the EOGM, Clause 6 of the Articles of Association has been amended and by virtue of amendment in Clause 6 of the Articles of Association, a right of preemption has been given to existing shareholders of the company, and by this provision, no shares can be offered to a person who at the date of the offer did not hold the equity shares of the company. The respondents have further claimed that alleged allotment of 9,90,000 equity shares of and in the company was made ignoring the right of preemption, which was guaranteed by Clause 6 of Articles of Association. The respondents have further stated that alleged allotment of 9,90,000 equity shares in favour of petitioners on March 15,2013 is

contrary to Clause 6 of the Articles of Association of the company. As such the illegal allotment was not given effect. The respondent no.2 has denied this fact that he is incorrectly claiming himself as director of the company. He has further denied that the respondent nos. 38 and 39 have acted in collusion with respondent no.2. He has stated that his father was having his firm M/s. S.M. Daga & Co. which have rendered professional services in the usual course of its business. The respondent no.2 has further stated that the digital signature is a personal and confidential file and digital signature is never kept with the auditors as it is the personal responsibility of the director concerned to protect and preserve his or her digital signature. The entire story made out by the petitioners that the digital signatures were retained by the respondent no.2 and is late father is a figment of the imagination of the petitioners and is a device to cover up their own fraud. The respondent no.2 has claimed that the petitioners have contributed only a sum of Rs.97,66,600/- in respect of 9,76,660/- equity shares whereas the other shareholders namely, the respondent nos. 6 to 32 had subscribed by contributing Rs.9,47,00,000/- by applying for the shares of the company at a premium of Rs.90/- per share. The contribution of the petitioners was very insignificant as compared to contribution of other shareholders being the respondent nos.6 to 32. The respondents have further stated that the entire Globe Cinema project was brought to a standstill by virtue of vindictive, obstructive and malafide approach adopted by the petitioners. Knowing fully well that their financial stake in terms of money invested in respondent no.1 company vis-a-vis Globe Cinema is only 9.35% as compared to the contribution of the respondent nos. 6 to 32 which was 90.65%. The respondents have denied all the averments of the petitioner.

Heard the Id. Counsels for the petitioners and the respondents and perused the records.

The petitioners have claimed that 9,90,000 shares were allotted to them on March 15,2013 which was illegally cancelled by the respondents. Petitioners claim that on March 15,2013, Board meeting of the company was held and it was resolved to allot 9,90,000 shares to P-1 and P-2. This allotment was done

to capitalise funds already brought in by the petitioners in the company and which was lying with the company as share application money. The shares were allotted at Rs.10/- each. Therefore, the value of the allotment was Rs.99 lakhs. The petitioner claims that he had brought in sums far in excess of Rs.99 lakhs in the company which was reflected as share application money pending allotment. In support of the claim of the alleged allotment, the petitioners have laid emphasis on the fact that form 2 (page 124 to 128 of C.P.), which was filed before the Registrar of Companies on April 5, 2013. This document shows that on 15th March, 2013, 9,90,000 shares @Rs.10/- each were allotted for which form 2 was filed with the ROC, which also bears the digital signature of respondent no.2 Dipak Kumar Daga as Chartered Accountant. The respondents had disputed the said allotment of 9,90,000 shares in favour of petitioners. The petitioners have contended that alleged cancellation of allotment of shares is wrongful, oppressive and illegal because the allotment was allegedly cancelled at a purported board meeting held on 8th April, 2013. The petitioners claim that on 8th April, 2013, P-1, P-2 and P-3 were the only directors of the company at that time. They alleged that no such board meeting was ever convened or attended by them and they further claimed that no such resolution or minutes of board meeting has been disclosed by the respondents in their proceedings. The petitioners have also laid emphasis on the fact that the cancellation of shares could only be done by applying the procedure prescribed under section 100 of Companies Act, 1956, which can be done only by the Hon'ble High Court. The petitioners have also laid emphasis on the fact that in spite of the allotment of shares in their favour on 15th March, 2013, shares were not reflected in the annual return or financial statement of the company for the year 2012-13 because R-2 in his capacity as Chartered Accountant was handling all such compliance work of the company and he abused his position of trust and acted wrongfully in collusion of R-30, who was the statutory auditor of the company.

The respondents have argued that amended Clause 6 of Articles of Association of the Company was effective since 23rd February, 2012 whereby

preemption clause was allegedly introduced by which existing shareholders of the company would have to be given an offer to subscribe to the allotment in proportion to their existing shareholdings. On this basis, respondent has argued that the alleged allotment was made in violation of the Clause 6 of the Article of Association of the company.

The petitioners have contended that on 23rd February, 2012 no such amendment in Articles of Association was passed in the alleged EOGM and they had no notice of convening the same because at that point of time, petitioners were the only directors of the company.

In support of the above claim, the petitioners have also laid emphasis on the form 66 (page 532 to 536 of C.P.) along with the compliance certificate filed by M/s. Acharya S.K. & Associates, Company Secretary. On perusal of the alleged form 66 and compliance certificate, it appears that in compliance certificate, Company Secretary has only mentioned that one extra ordinary general meeting was held during the financial year. There is no mention of alleged EOGM dated 23rd February, 2012. The petitioners claim that in the compliance certificate, the EOGM which is mentioned is relating to EOGM dated 20th June, 2011, which was held for increasing authorised share capital. On this basis, the petitioner claims that no EOGM took place on 23rd February, 2012, wherein Articles of Association was amended.

The petitioners have further argued that the alleged amended Clause 6 of the Articles of Association is being mentioned below "where at any time subsequent to the first allotment of shares in a company, it is proposed to increase the subscribed capital of the company by issue of new shares, then, subject to any directions to the contrary which may be given by the company in general meeting--- such new shares shall be offered to the persons, who at the date of the offer are holders of equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid on those shares at that time." On the basis of above Articles of Association, the petitioners claim that alleged amendment incorporated on 23rd February, 2012 and 9,90,000 shares, which

were allotted to the petitioners on March 15, 2013 is not covered by such provision because it was the first allotment in favour of the petitioner. This clause only affects the future allotment, i.e. allotment made after first allotment. Since impugned allotment of 9,90,000 shares comes in first allotment, therefore, these shares could not have been cancelled on the above basis. The petitioners have further laid emphasis on the fact that allotment of shares becomes effective immediately upon passing a resolution to that effect. In fact, R-2 himself filed the form 2 with RoC certifying the alleged allotment of 9,90,000 shares on April 05, 2013. Return of the said allotment, i.e. in the form of form 2 could have been filed only after the allotment is made. Therefore, respondent cannot claim that no such allotment was ever made in favour of the petitioners. It is undisputed fact that shares once allotted could have been cancelled only under the provision of section 100 of Companies Act, 1956 which provides for reduction of share capital of a company including in the event shares of a company are cancelled. The petitioners have claimed that the money, which was in lieu of the said allotment, was never returned to P-1 and P-2. The petitioners have also contended that in any event, the purported balance-sheet for the financial year 2012-13 was purportedly filed with RoC only 15th April, 2014, i.e. more than a year after the financial year ended on 31st March, 2013. The petitioner claims that the financial statements were intentionally filed belatedly because the alleged illegal act of cancellation of shares will come to the knowledge of the petitioners.

The petitioners have alleged that R-2 to R-5 have wrongfully shown 4,30,000 shares and 2,35,000 shares held by P-2 and P-3 respectively in the company, to be transferred to R-33 allegedly on 31st August, 2013. The petitioners claim that alleged transfer is illegal and wrongful whereas the respondents have claimed that transfer of shares was voluntarily and the petitioners are not stating true facts.

At this stage, without any evidence, it cannot be decided whether the alleged transfer of 6,65,000 shares in favour of R-33 was validly done or not.

At this stage, no finding can be given whether the alleged amendment in Articles of Association is a manipulated document or in reality an amendment that took place. But, it appears convincing that the cancellation of shares could have only been done by applying the proper procedure prescribed under section 100 of the Companies Act, 1956 and it is undisputed fact that the said compliance has not been made. In the circumstances mentioned above, the petitioners have prima facie case in their favour relating to 9,90,000 shares which have been allegedly cancelled.

The petitioners claim that the appointment of R-2 to R-4 as directors of the company on March 26, 2014 is wrongful and illegal and liable to be set aside on the basis that on 26th March, 2014, P-1 to P-3 were the only directors of the company and no board meeting was convened or held on 26th March, 2014 to appoint R-2 to R-4 as directors in the company. The petitioners have also contended that in the form DIR-12 (at page 303 of C.P.), the email ID of R2's firm being smd.roc@gmail.com is provided against "e-mail id of the company". This practice has been adopted by R2 in all the Forms challenged in the C.P. and such practice has been adopted with the obvious intention of preventing the petitioners from coming to learn of the illegal acts of R. There is no apparent reason or justification to provide the e-mail ID of a Chartered Accountant firm in a statutory form where the e-mail ID of the company itself has been requested. The petitioners claim that purported DIR 12 bears the alleged digital signature of P-1 but he did not use his digital signature to upload such form and the same has been misused by R2, who was at all material times in possession of the digital signatures of P-1 to P-3.

At this stage without any evidence it cannot be decided that form DIR-12 actually bears the signature of P-1 or not. It also cannot be ascertained that digital signature of P-1 to P-3 has been misused by R-2 or not but the question arises as to why form DIR-12 was filed with e-mail ID of R2, i.e. smd.roc@gmail.com is provided against e-mail id of the company. Petitioners claim that the alleged e-mail was used because no information should come to

the petitioners regarding the alleged appointment. At this stage, it cannot be ascertained whether in form DIR-12, intentionally R2's ID was mentioned in place of the ID of the company.

Petitioners have further claimed that they never resigned as directors of the company and there is no logical explanation or reason for P2 and P3 to resign as directors. At this stage, it cannot be ascertained whether P2 and P3 have voluntarily resigned from directorship or not but prima facie no logical explanation or reason appears for their resignation. It is also pertinent to mention that form DIR-12 was filed on 9th September, 2014 after a delay of nearly six months, after alleged appointment of R-2 to R-5 as directors.

P1 claims that he never received notice regarding his removal from directorship. The form DIR-12, which was filed after removal of P1 as director was filed with e-mail id of R2. The respondents have failed to explain as to why form DIR-12 was not filed with company's e-mail ID.

Petitioners claim that removal of P1 from directorship on the ground that he has misused and siphoned off the funds of the company is without any basis. At this stage, it cannot be decided that whether removal of P1 was justified or not.

Any finding regarding the alleged siphoning off funds by petitioner no.1 can only be given only after giving the parties opportunity to submit evidence. At this stage, it cannot be ascertained whether alleged removal of petitioner no.1 on the impugned ground was justified or not. The Id. Counsel for the respondents has argued that the signature of the P2 and P3 on the resignation letter has not been denied but it has been told that the said signatures are obtained by the respondents on the pretext of filing some returns as R2 was Chartered Accountant and he was handling all the compliances of the company. Therefore, the petitioners never raised any doubt regarding handing over the documents to respondent no.2 but the R2 has misused the trust reposed in him and manipulated these documents. However, no finding in this

regard can be given at this stage but prima facie there appears to be no logical explanation for resigning P2 and P3 from directorship of the company. It is also an undisputed fact that cancellation of 9,90,000 shares which were allotted in favour of P1 and P2, no procedure given in section 100 of Companies Act, 1956 was adopted. Under the said provision of Companies Act, share capital may only be reduced or cancelled only with the prior approval of the Tribunal or on the basis of Special Resolution. In this case neither the approval was obtained nor the copy of the said Special Resolution has been filed but it is said that the petitioner on his own has cancelled the said shares when one of the shareholders R-8 complained on 8th April, 2013 (page 151 and 152 of Reply of R1) regarding the amended Articles of Association. The petitioner has not admitted this document but has pointed out that the alleged complaint is of dated 8th April, 2013 and the alleged board meeting regarding cancellation of the petitioners share also took place on the same date i.e. on 8th April, 2013. According to the petitioners, this is unbelievable as even the alleged notice of the board meeting of 8th April, 2013 was allegedly issued on 31st March, 2013 (page 154 of reply of R1). It is pertinent to mention that prior to the alleged complaint of R8, notice was issued regarding the alleged board meeting dated 8th April, 2013 on 31st March, 2013. In the notice dated 31st March, 2013, no agenda was given and petitioners have denied their signature on the alleged notice. It is also important to mention that the said cancellation of 9,90,000 shares which were allotted in the petitioners name were not done after adopting the due procedure of section 100 of Companies Act. Therefore, the said cancellation of shares cannot be taken into consideration. In respect of the above-mentioned 9,90,000 shares petitioners have prima facie case, had these shares not been cancelled then the petitioners shareholding would not have been reduced to the extent of 16.1%. It is important to mention that petitioners' shareholding has been reduced on account of cancellation of 9,90,000 shares which were allotted in favour of P1 and P2 and further transfer of 6,65,000 shares in favour of R-33. Respondents have filed the document relating to the said transfer. Therefore, at this stage it cannot be said that the said transfer of shares were legally done or not.

On the above basis, it is clear that in this case initially the petitioners' shareholding was 100% in Goldstar and at the time of acquisition of Globe Cinema property, petitioners' shareholding came down to 51% but after the allotment of 6,65,000 shares in favour of petitioner nos.1 and 2, petitioners' shareholding became 67.49%. Respondents have denied the alleged shareholding of the petitioners but it is important to mention that after the first allotment of 9,90,000 shares in favour of the petitioners, R2 himself filed form no.2 before RoC in his capacity as Practising Chartered Accountant and copy of the said return is paper no.124 to 129 of C.P. Respondent has never denied his signature on the alleged form 2. Therefore, in spite of denial by the respondent regarding the shareholding of the petitioners, prima facie it appears that petitioners' shareholding was 9,90,000 shares on the basis of allotment of shares made on 15.03.2013.

Respondents have claimed that petitioners' shareholding is only 16% in the company on the basis of assertion made by the petitioner, his shareholding was 67.49%. Thus, prima facie it appears that petitioners' majority shareholding has been reduced to the extent of about 16%. The circumstances do not show any justification for resignation of petitioner nos.2 and 3 from directorship of the company. However, it is a matter of fact which can be decided later on but it is also clear that petitioners and father of respondent no.2 late Shri M.R.Daga was having good relationship. It also appears from the fact that in spite of 50% contribution by late Shri M.R.Daga all the directors of the company Goldstar were petitioner nos. 1 to 3 during the life time of late Shri M.R.Daga. It is also undisputed that M.R. Daga, the father of R2 was Chartered Accountant and was having the firm S.M.Daga and Co. and after the death of late Shri M.R.Daga, R2, who is also a Chartered Accountant succeeded him. Petitioners also claim that respondent no.2 has misused his position of being Chartered Accountant, misused the trust reposed in him and he with collusion of other respondents had manipulated the alleged resignation of petitioner nos.2 and 3 from directorship and further cancellation of shares allotted in favour of petitioners and removal of petitioner no.1 from directorship and all these

activities resulted in complete ousting of petitioners from management and control of the company and petitioners, who were majority shareholders, became a minority shareholder in the company. On the above basis, the petitioners have filed the petition under section 397 and 398 of the Companies Act on the ground of oppression and mismanagement by respondents and have also sought interim relief. Petitioners have also claimed that if the interim relief is not granted in their favour, then entire property of the company shall be alienated or transferred during pendency of the petition and petitioners will have to suffer irreparable loss.

Petitioners also claim that the only business of the company is holding the constructed areas at the Globe premises and only source of income is from the sale of such area. Petitioner has stated that on the basis of illegal cancellation of shares without adopting due procedure of law and manipulating resignation letters of the petitioner nos. 2 and 3 from the directorship of the company has been prima facie proved on the basis of documents pointed out by them. At this stage it cannot be ascertained that petitioner nos.2 and 3 have resigned from the directorship on their own or the alleged document is forged and manipulated.

In this case petitioner has argued that on the basis of record, he has proved that the return of financial year 2011-12 was filed belatedly in the year 2014 by the respondents intentionally. Petitioners have also claimed that in this case he has filed the copy of document DIR-12 which shows that after appointment of R2, R3 and R4 as directors and removal of petitioner no.1 from directorship and alleged resignation of petitioners nos.2 and 3 from directorship, copy of document DIR-12 was filed belatedly and that too with the e-mail id of R2, whereas the said return should have been filed immediately and that too with the e-mail id of the company. The petitioners claim that the said manipulation has been done simply to prevent that this information should not reach to the petitioners. However, no such findings can be given in this regard at this stage but prima facie it appears that the company's only business

is holding the constructed areas of the Globe premises and the only source of the company is income from the sale of the said properties. If during pendency of the case, such properties are sold out and transferred then certainly petitioners will suffer irreparable loss.

This is also clear from the records that petitioners' shareholding has been reduced from 67.49% to 16.1% and all the petitioners have been removed from directorship and respondents have taken over the management and control of the company. Therefore, there is a need for protection of the company's property. In the circumstances mentioned above, petitioners' prayer for interim relief deserves to be allowed.

ORDER

Petitioners' prayer for interim relief is being allowed and during pendency of the petition, both the parties are directed to maintain *status quo* regarding immovable properties of the company. Regarding the shareholding pattern, *status quo* should be maintained from the date of this order. The respondent no.1 is also directed to specify the shops and other areas that are available for sale within a period of four weeks. Respondents are directed to file reply to the company petition within two weeks and thereafter rejoinder, if any, may be filed within two weeks.

List the matter for argument on 16th Feb 2017.

S. Vijayaraghavan.

(S. Vijayaraghavan)
Member(T)


(Vijai Pratap Singh)
Member (J)

Signed on this 17th day of January, 2017