

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

C.A. No. 97 of 2010 and CA No. 01 of 2013

In

C.P No. 37 of 2009

(TP No.38/HDB/2016)

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

Date of Order: 20 .09.2016 /

Between:

1. A. Sudhakar
2. T. Prasada Reddy
3. G. Brahma Reddy

..... Applicants/Petitioners /

And

1. KATG Therapeutics Private Limited
2. K.C Sudhakar Reddy
3. K. Sarada
4. K. Ravi Kiran
5. KATG Pharmaceuticals  
Private Limited

... Respondents

6. S. Sowbhagya

Flat No. 502, H. No. 7-1-397/114,

Sai Sushma Homes, S.R. Nagar,

Hyderabad-500038.

7. Helox Healthcare Pvt. Ltd

Represented by its Managing Director

Shri Shiv Gupta, son of Late Dr. Ram Swaroop Gupta,



Residing at 145-A/5, Harsh Plaza,  
PuraniAnaj Mandi,  
Gohana 131301

... Respondents/Proposed Respondents

Counsel for the Petitioners:           Shri N.P.Vijay Kumar along with  
Anil Mukherji, H. Karthik  
Seshadri & I Thomas

Counsel for the Respondent No. 1 to 5       :           Shri B.P.Mohan

Counsel for the Respondent No.6 & 7       :           Shri E.V.Venugopal

**CORAM**

**Hon'ble Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)**  
**Hon'ble Mr. RAVI KUMAR DURAISAMY, MEMBER (TECH)**

**ORDER**

**(As per Rajeswara Rao Vittanala, Member (J))**

1. The Company Petition bearing No. 37 of 2009 was initially instituted in the then Company Law Board, Chennai. Upon the constitution of NCLT Bench, at Hyderabad for the States of Andhra Pradesh and Telangana, the case was transferred to this Bench as it falls under the jurisdiction of this Bench.
2. The present Company petition was filed u/s 397,398 r/w 402, Schedule XI, Section 111 and other applicable provisions of the Companies Act, 1956 by inter-alia seeking to set aside, cancel the

alleged allotment of shares; to supersede the Board of Directors; to appoint an Auditor to carry out an investigation into the affairs of the Company, consequently surcharges the second /third respondent for any diversion /misapplication of the Corporate funds belonging to the company etc.

3. The brief facts leading to the filing of the present CA No. 97 of 2010 and CA No. 1 of 2013 are as follows:

a) The Applicants/Petitioners (herein after referred to as applicants for the present two Applications) are bothers-in-law of the Second Respondent herein. The third and fourth respondents are wife and son of the second respondent respectively. The Applicants and the second respondent, after having gained considerable experience in the Pharmaceuticals field, have incorporated a Company in the name and style of M/s KATG Therapeutics Private Limited on 7<sup>th</sup> July, 1996. The name of the company itself indicate the names of the applicants and the second respondent. "K" stands for KC Sudhakara Reddy, "A" stands for A.Sudhakar, "T" stands for T. Prasada Reddy and "G" for G.Brahma Reddy.

b) The main objects of the company is to carry on the business of manufacturing, selling, buying etc in all kinds of drugs and



pharmaceutical formulations. The Company is a Private Limited Company within the meaning section 3(1)(iii) of the Companies Act, 1956. No invitation to public to subscribe and the allotment of shares too was restricted.

- c) The authorised capital of the company as per the applicants is Rs. 30,00,000/- divided into 3,00,000 equity shares of Rs. 10/-each and the paid up capital is Rs. 4,00,000 divided into 40,000/- equity shares of Rs. 10 each.
- d) The dispute in the present Company petition is that there was an illegal allotment of 2,60,000 equity shares of Rs. 10/- each and other connected mismanagement of affairs of Company.
- e) When the Applicants on coming to know that the second respondent sold the immovable property admeasuring 1.5 bighas situated at Roorkhe in Uttaranchal along with the building constructed thereon, they have filed CA No.44 of 2010 by seeking a direction to restrain the respondents, by way of an order of injunction from selling any of the fixed assets and immovable properties more particularly from selling any of the fixed assets and immovable properties more particularly the property located at Roorkhe, Uttaranchal and Jedimitala in Hyderabad of the company.

The Company Law Board (Board) passed an order dated 05.03.2010 by recording the statement of the Respondents that the properties involved were already sold.

- f) The applicants have again filed another CA No.64 of 2010 by inter-alia seeking by a direction to advance the hearing of the CA No.44 of 2010 at an early date “to direct to implead purchase of the properties of the company situated at Roorkee, Uttaranchal and Jedimitala in Hyderabad as respondent to the company CP No.37 of 2009 etc. The Board passed the following order on 31.03.2010:-

“Counter to CA No.44 of 2010 filed by the Respondents”.

“Respondents in CA No.64 of 2010 seeks time to file Counter. Respondents will file counter to CA No.64 of 2010 within two weeks. In the mean time Respondents 2,3, & 4 is directed to account for the proceeds received from the sale of the immovable property at Uttaranchal and Hyderabad. They are further restrained from further using the sale proceeds without the permission of this Bench”.

- g) The main CP was listed on 11.06.2010 and the Bench observed that the CP pleadings completed and liberty was granted to the petitioners to implead the proposed purchaser.
- h) Accordingly, the Present CA No. 97 of 2010 was filed under

Regulation 44 of the Company Law Board Regulations by interalia seeking a direction to respondents to produce bank statements, to implead the respondents No. 6 & 7 as Respondents 8 and 9 in the main CP etc as they are hand in glove with the main respondents in their misdeeds and in committing fraud on the Company.

On the above CA, the Board passed the following order on 22.06.2010:

“Respondents Counsel reported that they are relinquishing the vakalat”. CA moved by the Petitioner to implead R6 & R7. Respondents in CA absent. Petitioner will issue urgent notice to R6 & R7. The CP stands posted to 24.06.2010. Till then the Respondents are hereby restrained from executing any deed of sale or other documents in respect of the property located at Roorkee in Uttaranchal. Petitioner will serve copy of this order to the Respondents. Respondents at liberty to apply”.

- i) Subsequently, CA No. 01 of 2013 was filed by seeking permission to amend the CP adding the following relief to the existing relief in the CP:-

“Declare that the Sale Agreement No.706 of 2010 dated 05.02.2010 entered into between the 1<sup>st</sup> Respondent and the 9<sup>th</sup> Respondent is null and void and not binding on the petitioners.

Restraining the respondents from executing any deed of sale or other documents in respect of property situated at Roorkee with respect to Sale Agreement No.706 of 2010 dated 05.02.2010”.

j) All the CA's along with CP are pending disposal on the file of this Bench.

4. Heard Shri N.P. Vijay Kumar, learned counsel for the petitioners, Shri B.P.Mohan, Learned counsel for the Respondent No. 1 to 5 and Shri E.V.Venugopal, Learned counsel for the proposed Respondents and also perused the replies/counter/rejoinder filed by them.

5. The Learned Counsel for Petitioners, while reiterating the averments made in the main petition, several CAs filed by him on behalf of the petitioners, have further submitted how the company affairs have been managed to detrimental of the interest of petitioners and the company itself. He has brought out to our notice about several interim orders passed by the Company Law Board from time to time to protect the interest of petitioners. He has further pointed that the subject property is already an issue before the Board and the Board has already granted liberty to the petitioners to implead the proposed purchasers vide order dated 11.06.2009. He further submitted while CA No. 97 of 2010 was

kept pending, he has filed CA No. 01 of 2013 for amendment of the prayer of the CP. In fact Board heard CA No.01 of 2013 and 97 of 2010 and reserved for orders on 19.11.2013. However, subsequently the cases were released from orders on 28.08.2014. He submitted that the proposed Respondent No. 6 & 7 are necessary and proper parties to be impleaded in the main company petition as the properties of the company were purchased by the Respondent No.7 and the Respondent No.6 is connected with the transactions of the property, while the matter is pending before the Company Law Board. So whatever, action taken by the respondents would, naturally be subject matter of the issue to be decided. Thus, he prayed the Tribunal to allow both CA Nos.97 of 2010 and 01 of 2013.

6. Sh. B.P. Mohan, the Ld. Counsel for the Respondent No. 1 to 5 has strenuously opposed both the CAs by filing the Counter Statement dated 11.09.2010. He has stated several contentions with regard to the merits of the CP. He has, however accepted that the properties in question was effectively sold, possession was delivered after the receipt of full consideration and the third party rights have already been set in and the registration of the same is just a mere formality to be completed. It is further contented that the Respondent No. 6 &

7 (proposed Respondents) are nothing to do with the contentions raised by the Applicants/Petitioners. It is also denied that the contentions of the Applicants/ Respondents that they were holding 75% of the paid-up capital of the company, constituting 3/4<sup>th</sup> of the number of shares of the company. The Applicant/Petitioners by filing several CA's causing harm to the progress of the company and creating impasse in the smooth administration in the management of the company. It is further alleged that the Applicants/Petitioners, by filing several applications, bent upon to blackmail the respondents for their selfish ends. They defended the sale in question as it was done in the interest of the company. It is further stated that the Respondent No.6, who is the mother of Respondent No.3 has, helped the company when the company was in need of funds. They denied the allegation that the Respondent No. 6 & 7 were in hand in glove with the Respondents. Ultimately, they summed up that the Respondent No. 6 & 7 are neither necessary parties nor proper parties for adjudication of *this* pending in the main case as their impleadment in the case can neither help the Court to adjudicate the issues in justifiable manner nor they are proper party. Sh. K.C. Sudhakar Reddy, the Second Respondent in the CP also appeared in person and, submitted along with his Counsel that the impleadment is unnecessary and they will take

care of interest of the proposed respondent's transactions. Thus, they prayed both the CA's to be dismissed with exemplary costs.

7. Shri. E.V. Venugopal, representing proposed respondent No. 6 & 7 has strongly opposed the maintainability of both the Applications by filing separate replies for Respondent No. 6 & 7. The Respondent No.6 has filed counter statement dated 08.11.2011 in CA No.97 of 2010 by inter-alia contending that whenever the company was in need of funds, she used to advance necessary funds and, she was not at all concerned in any way with the actual affairs of the company nor she was involved in the business of the company and, it is for the applicants/petitioner to establish their case. She denied all the allegations made against her in the present applications as baseless .

The proposed respondent No. 7 (Helax Healthcare Private Limited) has also filed a separate reply dated 6<sup>th</sup> April, 2011. It is contended that they are not aware of the orders passed in CA No. 64 of 2010. It is stated that when their company was in need of land at Roorkee and thus approached the 1<sup>st</sup> respondent for purchase of land to an extent of 1020 Sq Meters belonging to the first respondent's Company. Accordingly, they purchased the land in question for a total consideration of Rs. 21 lakhs and, an agreement was also entered into and also registered at the office of SRO, Roorkee on 6<sup>th</sup> February, 2010. And total consideration was paid and took possession of the same also. It is further contended that he has purchased the land for its true



value and spent huge amounts on construction, machinery and other infrastructure on the property in question. It is also contended that a large number of employees working in the 7<sup>th</sup> respondent company and thus sufficient working capital by way of loans from the banks is very much essential and the company is not in a position to avail loans until and unless the property in question is registered in its name. It is finally contended that the seventh respondent neither the necessary party nor a proper party for adjudication of the dispute raised in the main company petition and its impleading would not help to decide the issue in the main case. On the other hand allowing this application by impleading this seventh respondent would put them to great hardship and prejudice for no fault on its side. Therefore, the seventh respondent prayed the Tribunal to dismiss both the CA Nos. 97 of 2010 and 01 of 2013.

8. The Learned Counsel for the proposed Respondent(s) has also filed written submissions on behalf of Respondent No.7/9. It is admitted that the 7/9<sup>th</sup> respondent entered into an agreement on 05.02.2010 with the 1<sup>st</sup> respondent company through its Managing Director i.e Sh. K.C. Sudhakar Reddy for the purchase of the property in question for a total consideration of Rs.21.00 Lakhs. And the total consideration was paid on the same date, the agreement of the sale was registered on 06.02.2010. It is further averred that 7<sup>th</sup> Respondent was not aware of the present CP No. 37 of 2009 at the time of execution of the agreement of sale. It is stated that both the

applications are not maintainable as no relief was sought against the Respondent No.7 in the main CP No.37 of 2009. They stated that the property in question was purchased basing on one of the averments in the agreement of sale, made by the Managing Director by stating that the property was free from all debts, transfer encumbrances and mortgages etc.

The Learned Counsel relied upon the principle of Doctrine of Ostensible Authority and Doctrine of Indoor Management. As per the said principles, whenever a third party dealing with a company, that party would understand that the Director of a company has an authority to act for such a company and, the company would be bound by the actions of the directors, even if the director has no actual authority, whether express or implied. It is further stated that the Doctrine of Indoor Management provides protection to the outsiders who are dealing or contracting with a company. Accordingly, the 7<sup>th</sup> Respondent was under the bonafide impression that the 2<sup>nd</sup> Respondent has transacted the property in question with full authority as per the powers conferred on him in accordance with the Articles of the Company, Boards Resolution etc. The 7<sup>th</sup> Respondent also defended the actions of the Managing Director of the 1<sup>st</sup> Respondent Company. It is finally contented that the property

in question was purchased for a valid consideration and the same should be declared as valid. Therefore, it is prayed that the Tribunal may be gracefully pleased to dismiss the applications and declare the alleged sale agreement legal and valid and also sought the directions to the Respondent Company to execute the sale deed of the property in favour of the 7<sup>th</sup> Respondent.

9. Now the issue to be decided in the present CA No. 97 of 2010 and 01 of 2013 is whether the applicants/petitioners are justified in seeking to implead the 6<sup>th</sup> & 7<sup>th</sup> Respondent (8<sup>th</sup> and 9<sup>th</sup> in Main CP) and to amend the prayer in the Main CP No.37 of 2009.

10. During the course of the arguments, the Learned Counsel for the Applicants/Petitioners submitted that he is restricting the prayer only to implead Respondent No.6 & 7 in CA No.97 of 2010 and consequently want to amend the prayer in CP No. 37 of 2009 as prayed in CA No. 01 of 2013.



11. It is not in dispute that the CP No. 37 of 2009 was filed in June 2009 before the Company Law Board, Chennai under section 397 and 398 r/w section 111 of the Companies Act, 1956 by mainly alleging that the affairs of the company are not being conducted in accordance with the main objects as contained in the Memorandum

of Association of the Company and also sought a direction to appoint an auditor to carry out an investigation into the affairs of the company, in order to avoid diversion/mis-application of the corporate funds and also asked to make 2<sup>nd</sup> & 3<sup>rd</sup> Respondent to be liable for the loss caused to the company etc.

12. The Learned Counsel for the proposed Respondents has contended that his clients were not aware of the pending of the CP No. 37 of 2009 and, thus by believing the version of the 2<sup>nd</sup> Respondent, they have entered into an agreement of sale of the property in question for a lawful consideration. Whether, 7<sup>th</sup> Respondent is aware or not about the pending of the present petition, it is not in dispute that the 2<sup>nd</sup> Respondent is aware of the CP No. 37 of 2009. It is the responsibility of the 2<sup>nd</sup> Respondent to put the 7<sup>th</sup> Respondent under notice, while dealing with the property of the 1<sup>st</sup> Respondent Company, of which he is the Managing Director. However, the 2<sup>nd</sup> Respondent has not transacted the property in question in a fair manner. On the other hand, buyer should also make an enquiry about the title of the property before purchasing. When a petition under section 397 & 398 of the Companies Act, 1956 is pending, it is but natural that the parties to the litigation should not enter into major transactions relating to the affairs of the company.

Here the issue in the present applications, as mentioned above is very limited to the extent of permitting to implead the proposed respondents so as to hear them before passing final orders in the main Company Petition. Whether, the 2<sup>nd</sup> Respondent and 7<sup>th</sup> Respondent are justified or not about the impugned property transactions can be decided in the main Company Petition. So, in order to give opportunity to the alleged bonafied purchaser of the property in question, it is necessary to permit the Applicants/Petitioners to implead the Respondent No. 6 & 7 to the main Company Petition and consequently permission has to be granted to amend the relief.

13. The contentions of the Learned Counsel for the proposed Respondents as to whether, the proposed Respondents are entitled for the protection of the benefit of Doctrine of Ostensible Authority and Doctrine of Indoor Management is to be examined, after permitting them to come on record in the main Company Petition.

14. It is not in dispute that the property in question belongs to the 1<sup>st</sup> Respondent Company and while the main Company Petition was pending and the Petitioners also filing CA's before the Company Law Board about the transactions of the 2<sup>nd</sup> Respondent, the 2<sup>nd</sup> Respondent sold the property in question. When the 7<sup>th</sup> Respondent is also contending that he is protected by law for the transactions, he

has entered into with the 2<sup>nd</sup> Respondent, it is necessary to hear him in the main petition. Principles of natural justice also demands that all parties to the lis should be made a party to a litigation in order to avoid multiplicity of litigation in future. Hence, we hold that the Respondent No. 6 & 7 are necessary and proper parties to the CP No. 37 of 2009 and, the amendment also has to be carried out consequently.

15. In the aforesaid facts and circumstances of the case and, to meet ends of justice, we allow both the CA No. 97/2010 and CA No. 1/2013. Applicants/Petitioners are directed to file amended CP copy within 15 days, after duly serving copies to all parties including proposed parties. We make it clear that we have not gone into the merits of the transaction in question made with the Proposed

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Respondent No7. No order as to costs.

Post the case to 29.09.2016 for the completion of pleadings. We further direct the parties that no further time will be granted for completion of pleadings, since the CP was instituted in the year 2009.



Sd/-

**RAVIKUMAR DURAISAMY**  
**MEMBER (TECHNICAL)**

Sd/-

**RAJESWARA RAO VITTANALA**  
**MEMBER (JUDICIAL)**

*V. Annapoorna*  
**V. ANNA POORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD - 68