

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
C.P. No. 03/111/CLB/MB/2013**

CORAM:

**SHRI M. K. SHRAWAT**  
MEMBER (JUDICIAL)

In the matter of Section 111 of the Companies Act, 1956

BETWEEN:

Mr. Pradeep Narayan Tonpe

... Petitioners

Versus

M/s Karmic Labs Pvt. Ltd. & Ors.

... Respondents

**PETITIONER:**

Mr. Pradeep Narayan Tonpe

**RESPONDENTS**

1. M/s. Karmic Labs Pvt. Ltd.
2. Ms. Nidhi Saxena
3. Mrs. Sudha Saxena

**PRESENT ON BEHALF OF THE PARTIES:**

1. Mr. Madan Godse, Advocate for Petitioner
2. Mr. Prashant H. Bose, Advocate for Respondent

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**ORDER**

**Reserved on: 19.09.2016**

**Pronounced on: 17.10.2016**

1. This Petition was filed before CLB, Mumbai on 20.03.2012 and thereafter transferred to NCLT in the light of the Companies Act, 2013.

2. From the Petitioners' side Ld. Advocate Mr. Madan Godse appeared and explained the facts of the case that the Respondent No. 1 Company i.e. M/s. Karmic Labs Pvt. Ltd. was incorporated on 10.08.2005 having its registered office at Powai, Mumbai, with a paid up capital of Rs. 8,14,140/- (Rupees Eight Lakhs Fourteen Thousand One Hundred and Forty Rupees Only). When the Company was incorporated, one Ms. Nidhi Saxena

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was having the largest shareholding In the Respondent No.1 Company and she was the first Director of the Company. The main object of the Company was stated to be Clinical Trial Management, Clinical Data Management, etc. Ld. Counsel has pleaded that the main reason for filing of this Petition is in respect of the rectification of "Register of Members". The main controversy is in respect of 1,000 Shares alleged to be transferred in the name of the Petitioner in addition to the shareholding of 500 shares by the Petitioner.

2.1. The Petitioner has claimed that he was appointed as one of the Directors of the Respondent No. 1 Company on 25.05.2007, thereafter he was also appointed as Chief Operating Officer on 18.09.2007. According to the claim of the Petitioner he was responsible for all day-to-day operations; liaison with the clients, etc. The Petitioner had acquired the said 500 Shares on payment of Rs. 5,000/- through cheque to the Respondent No. 3 namely Mrs. Sudha Saxena, mother of Respondent No. 2. These shares were duly recorded in the Annual Return of the Respondent No. 1 Company. The other Respondents have not objected the acquisition of 500 Shares of the Petitioner; as argued in their Reply by Ld. Advocate of the Petitioner.

2.2. Ld. Advocate for the Petitioner has informed that the dispute is in respect of 1,000 Shares which were alleged to have been allotted in terms of an agreement claimed to have been signed on 01.07.2007. The cost of 1,000 Shares was fixed @ of Rs. 10/- per each Share amounting to Rs. 10,000/- (Rupees Ten Thousand Only). However, as per the submission of the Ld. Advocate, the Petitioner had paid a sum of Rs. 30,000/- through cheque of ICICI Bank Ltd. According to him the bifurcation of Rs. 30,000/- was that a sum of Rs. 10,000/- was paid as consideration of 1,000 Shares. Rest of the amount of Rs. 20,000/- was towards a loan to the Respondent No. 1. The said cheque of Rs. 30,000/- was encashed on 09.07.2007. The allegation is that when the Petitioner wanted to sell those 1,000 Shares, then it was objected by the Respondent No. 2 and an E-mail was written to the Petitioner, informing therein, that the Petitioner had shareholding of only 500 Shares. The Respondents have informed that the Share Certificates were sent through courier to the Petitioner. The Petitioner had tried to explain the current position of his shareholding but Respondents had not co-operated. Thereafter, a legal notice was issued. The Petitioner has resigned from directorship of the Respondent No. 1 Company on 15.10.2008. The objection is that as per the R.O.C. records the Petitioner was shown as holding 500 Shares of Respondent No.1 Company and the subsequent Annual Returns have also reflected only

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500 Shares in the name of the Petitioner. On the other hand, the Petitioner is claiming that he is in possession of Share Certificate, however, the Respondent No.1 had not entered the same in the prescribed Register. Therefore, filed this Petition seeking direction for registration of 1,000 Shares in the name of the Petitioner.

3. In Reply, Ld. Counsel of Respondents has explained that the Petitioner was serving another Company earlier, however he has given an appointment to serve Respondent No.1 Company for a minimum period of three years. The Petitioner was appointed as Executive Director of the Respondent No. 1 Company on 25.05.2007. However, without completing the agreed period he has resigned on 15.10.2008 but never objected in the past his correct holding of 500 Shares. He took the advantage of having physical possession of blank Share Certificates and manipulated the documents. Ld. Advocate has explained that the alleged payment of Rs. 30,000/- claimed to be in respect of 1,000 Shares was not in connection with the share transfer money.

3.1. Ld. Counsel for the Respondents has also informed that the Petitioner himself has signed the Annual Return up to 30.09.2007 wherein the shareholding of the Petitioner was informed as 500 Shares only. A legal question has also been raised that if the Petitioner has any objection of not registering correct shareholding then as per section 111 of Companies Act, 1956. The Petitioner was required to object within two months from the date of refusal of transfer or four months from the date of instrument of transfer delivered to the Company. Ld. Counsel has also informed that the Petitioner was given an appointment "as head of DM and IT" therefore he was nothing but an employee of the Company. He has concluded that the Petition was filed with manipulated evidences but the correct fact was that the Petitioner had only 500 shares which he had admitted while filing an Annual Return before the ROC. Even the amount of Rs. 30,000/- was wrongly demonstrated as a payment for 1,000 Shares of Rs. 10,000/-. But the correct position was that the said amount was duly returned through cheque by Respondent No. 1 and said cheque, the number of which is also mentioned, has duly been encashed by the Petitioner. The impugned 1,000 Shares alleged to have been transferred are factually in the possession of the Respondent No. 2 bearing distinctive No. 5001 to 5500 and 6001 to 6500. Those shares are regularly reflected in the name of the Respondent No. 2 in the Statutory Share Register. The Petitioner has not placed on record any evidence that a meeting of Directors was ever held wherein it was decided to transfer or allot 1,000 Shares

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to the Petitioner, an argument was advanced. Rather, during the term of his Directorship no Board Meeting could take place. Ld. Counsel has concluded that a Petitioner has failed to establish his *bona fide*. Therefore, Petition deserves to be dismissed.

4. Parties heard. Case record perused. The Petitioner i.e. Mr. Padeep Narayan Tonpe was undisputedly an employee of another concern earlier and thereafter joined Respondent No.1 Company i.e. M/s. Karmic Labs Pvt. Ltd.

5. The Petitioner was appointed on 25<sup>th</sup> May, 2007 and given assignment w.e.f. 10<sup>th</sup> September, 2007. He had agreed to serve the Respondent No.1 Company for a minimum period of three years. He was appointed as an Executive Director of Respondent No.1 Company claimed to be w.e.f. 25<sup>th</sup> May, 2007. However, he had resigned on 15<sup>th</sup> October, 2008. This Petition has been filed on 20<sup>th</sup> March, 2012.

6. As per the Petitioner, the cause of action had arisen when he tried to sell 1,000 equity shares of Rs.10/- each of Respondent No.1 Company to another entity i.e. M/s. Basil Growth Corporation on 4<sup>th</sup> March, 2011. On receiving the said information, Respondent No.2 wrote an e-mail to the Petitioner informing him that the shareholding of the Petitioner was only 500 equity shares of Respondent No.1 Company bearing Distinctive Nos. 9501 to 10000 issued on 9<sup>th</sup> July, 2007. On the other hand, the claim of the Petitioner is that in addition to the ownership of 500 equity shares, the Petitioner was also holding 1,000 shares.

7. At this juncture, it is worth to mention that the ownership of 500 equity shares, as enumerated hereinabove, is not in dispute. In respect of the disputed 1,000 equity shares, the claim of the Petitioner is that a sum of Rs. 30,000/- was paid through cheque on ICICI Bank to the Respondent No.1 Company. As per the alleged claim, the said sum of Rs.30,000/- consisted a sum of Rs. 10,000/- towards the consideration of 1,000 equity shares and the balance amount was claimed to be towards loan. On the other hand, the vehement objection of the Respondents is that the impugned amount of Rs. 30,000/- was duly returned vide cheque and also duly encashed by the Petitioner on 1<sup>st</sup> September, 2007. To draw a justifiable conclusion, it is pertinent to make an observation that there was no specific explanation as to why the payment of Rs. 30,000/- was made instead of

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Rs.10,000/- being the transfer price of the equity shares. Likewise, there is no satisfactory explanation that why the amount of Rs. 30,000/- was received back by the Petitioner?

8. In addition to the above doubt which remained unexplained; the background of the case has also revealed that the Petitioner was initially invited as an employee. The admitted factual position was that the Respondent No.1 Company was incorporated on 10<sup>th</sup> August, 2005 by the first Directors i.e. Ms. Nidhi Saxena (Respondent No.2) and Mrs. Sudha Saxena (Respondent No.3), stated to be a closely held family company managed by daughter and mother. Facts of the case have further revealed that to manage the business and other affairs of the Respondent No.1 Company the Petitioner was invited who had resigned from his earlier job in Bengaluru. From the side of the Respondents it is explained that the Petitioner was later on inducted as a Director of Respondent No.1 Company w.e.f. 25<sup>th</sup> May, 2007 to work in the capacity of Chief Operating Officer of the Respondent No.1 Company w.e.f. 18<sup>th</sup> September, 2007. The Petitioner was assigned with the responsibility to manage the delivery and operations as well as liaising with the clients along with the responsibility of administration. In that capacity, the Petitioner was having the possession over the official records of the Respondent No.1 Company. On account of this fact, a serious controversy was raised that the Petitioner being in a position to control the documents of the Respondent No.1 Company has manipulated the impugned 1,000 equity share certificates. The Respondents' vehement objection is that the evidence with which the transfer of 500 equity share certificates were established such as payment of exact amount of price of the shares, transfer forms, etc., but in respect of the impugned 1,000 equity shares there was no direct or indirect corroborative evidence to establish that the impugned 1,000 equity shares were duly transferred in favour of the Petitioner. I am also of the opinion that the Petitioner was not successful beyond doubt in establishing the transfer of 1,000 equity shares in his favour.

9. My attention has also been drawn on certain documents which were furnished before the Registrar of Companies intimating the shareholding pattern of Respondent No.1 Company which have duly been signed by the Petitioner himself. The Respondents have placed on record that the Respondent No.1 Company has reflected the correct position of the shareholding as per the financial statement drawn for Financial Year ended on 31<sup>st</sup> March, 2008 wherein the Petitioner himself was a signatory along with Respondent No.2 on the balance sheet and other audited accounts. From the side of the Petitioner this

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evidence was not negated; hence this evidence goes against the Petitioner. While verifying the records placed by the respective parties in the compilation, it is found that the controversy in the distinctive numbers of the impugned 1,000 equity share certificates could not be satisfactorily resolved by the Petitioner. Rather, the allegation of the Respondents was that the Petitioner having physical control over the records of the Respondent No.1 Company was also having access on the blank share certificates. This situation has also raised serious doubts about the *bona fides* of the Petitioner.

10. As a result, *inter alia*, it is hereby concluded that the Petitioner has not proved to the hilt his *bona fide* claim of transfer of 1,000 equity shares of Respondent No.1 Company. He has admitted that he was an employee of the Respondent No.1 Company but also given an assignment to look after and manage the business affairs of the company and, therefore, he was allotted 500 equity shares (not in dispute) to become a Director of the Respondent No.1 Company. But the Petitioner has failed to answer satisfactorily why the transfer of 1,000 equity shares has never been put on record. On the contrary, the allotment of 500 shares was duly placed on record as per the financial statement filed for the accounting period ended on 31<sup>st</sup> March, 2008 admittedly signed by the Petitioner himself.

4. Under the totality of the facts and circumstances of the case, I find no force in this Petition. The relief sought about the rectification / entering the impugned shares in the "Register of Members" of Respondent No.1 is hereby rejected. The Petition is rejected. However, no order as to cost.

sd/-

Dated: 17.10.2016

**Shri M.K. Shrawat**  
Member (Judicial)



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, MUMBAI**

**C.P. No. 03/111/CLB/MB/2013**

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2. Ms. Nidhi Saxena
3. Mrs. Sudha Saxena

**CORRIGENDUM**

In respect of the Order pronounced in the above matter on 17<sup>th</sup> October, 2016, a typographical error is hereby corrected to read the name of one of the legal representatives representing the Respondents as **"Mr. Prashant H. Bare"**.

Dated: 25.11.2016

*MK Shrawat*

**Shri M.K. Shrawat**  
Member (Judicial)