

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

C.P No. 10 of 2013

(TP No.96/HDB/2016)

Date of Order: 05 .10. 2016

Between:

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

1. Mr. M. Sridhar Reddy,
S/o Late M. Koti Reddy, aged about 35 years,
Occupation: Engineer, Resident of G-80,
Madhuranagar,
Hyderabad-500 038, Telangana
2. Mr. M. Srinivas Reddy,
S/o Late M. Koti Reddy, aged about 37 years,
Occupation: Doctor, Resident of G-80,
Madhuranagar,
Hyderabad-500 038, Telangana
3. Smt. T. Jayabharati,
W/o Late M. Koti Reddy, aged about 70 years,
Occupation: Retired Lecturer, Resident of G-80,
Madhuranagar,
Hyderabad-500 038, Telangana
4. Mr. T. Seetha Rami Reddy,
S/o Late T. Koti Reddy, aged 92 years,
Occupation: Agriculture, Resident of G-80,
Madhuranagar,
Hyderabad-500 038, Telangana

.... Petitioners

And



1. Rohini Auto Electricals Private Limited

(Represented by its Managing Director, Shri. Bantu Rama Rao,

S/o. B. Ramulu, aged 64 years)

D-22, Phave-IV, Extn., IDA, Jeedimetla,

Hyderabad-500 055, Telangana

2. Mr. Bantu Rama Rao,

S/o. Ramulu aged about 64 years,

Managing Director of Rohini Auto Electricals Private Limited,

MIG -360, KPHB Colony, Kukatpally,

Hyderabad-500 072, Telangana

3. Mr. Mavuluri Prasad Reddy,

S/o. M. Venkat Reddy aged about 61 years,

Director of Rohini Auto Electricals Private Limited,

Residing at G-47, Madhuranagar,

Hyderabad-500 038, Telangana

... Respondents

Counsel for the Petitioners :

Shri P. Ravi Prasad

Counsel for the Respondents :

Dr. S.V. Ramakrishna

CORAM

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)

HON'BLE Mr. RAVIKUMAR DURASAMY, MEMBER (TECH)



ORDER

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

1. The Company Petition bearing No. 10 of 2013 was initially instituted in the then Hon'ble Company Law Board, Chennai. Upon the constitution of National Company Law Tribunal (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. The case is numbered as TP No.96/HDB/2016.
2. The Company Petition was filed under Sections 111, 397 and 398 of the Companies Act, 1956 by the Petitioners by inter-alia seeking directions to the Respondents ; to transfer 7360 shares held in the name of Late Mr. M.Koti Reddy to 1st to 3rd Petitioners and Ms. M.V.L.Sripriya being the legal heirs of Late Mr. M. Koti Reddy; to appoint an independent 3rd Party Auditor to conduct audit accounts of R S Precision Engineering Industries; to direct the Respondents to purchase the Petitioners shares totalling to 57,710 shares at the fair market value ascertained by independent valuer; to restrain the Respondents from raising any loans for the 1st Respondent Company creating any charge over the assets of the company etc.
3. Brief facts as set out in the present company petition by the petitioners are that Rohini Auto Electricals Private Limited Company (herein



after referred to as the first Respondent Company) was set up on 19th September, 1983 by Sh. K. Abbai Reddy, Sh. Bantu Rama Rao (Respondent No.2) and Sh. Mavuluri Prasad Reddy (Respondent No.3) being first Directors of the Company along with 4th Petitioner. At the time of incorporation of the 1st Respondent Company, the father of the 1st and 2nd Petitioner mainly Mr. M. Koti Reddy was in full employment with Shaney Paris Rhone Limited. The Shaney Paris Rhone Limited deals with similar business as that of the Respondent Company No.1. Mr. Koti Reddy got so much experience in manufacture of starter motors and alternatives and also underwent special training in France to study manufacturing of starter motors and alternatives, while working in the said company. Subsequently, Sh. Koti Reddy resigned from the said Shaney Paris Rhone Limited Company in the year 1986 and joined the 1st Respondent Company. He has contributed so much to the development of the 1st Respondent Company with his vast experience got in Shaney Paris Rhone Limited. He was instrumental in designing machines and tools for the 1st Respondent Company and, also provided working capital from the agricultural income of his wife (petitioner No. 3)

4. Sh. Koti Reddy, on being joined the Company, was made Executive Director and later on elevated to the Chairman of the Company. He



passed away on 17.08.2001. Subsequently, it is alleged that the Respondents took away the shares belonging to the Petitioners for shares adding upto 33.15% of the total value of the shares of the Respondent Company. The share certificates were returned to the Petitioners only on 28.05.2012 i.e. after the Petitioners got issued legal notice dated 28.03.2012. It is contented that the illegal detention of the share certificates of the petitioners by the Respondents has deprived the petitioners of their right to sell shares for almost 10 years. It is also stated that the Respondents have taken the signatures of the 3rd Respondent on certain blank paper and false pretence.

5. The Respondents appointed the 3rd Petitioner herein as Director on the Board of Directors of the 1st Respondent Company 22.01.2002, after the demise of her husband Sh. Koti Reddy. A nominal remuneration of Rupees Ten Thousand Rupees was fixed per month, which includes telephone charges and the same was continued for a period of nine years i.e. from September 2001 to 2010 and, it was later increased to Rs. 15,000/- per month from December 2010. It is further alleged that even though the 3rd Petitioner was on the Board of Directors, she was never allowed or provided an opportunity to be involved in the management of the 1st Respondent Company, thereby violating her legal rights.



6. It is further alleged that during the 10 year tenure of 3rd Petitioner as a Director of the 1st Respondent Company, the Respondents never served her with a notice for any Board Meeting as per law till she got issued them legal notice dated 28.03.2012. So she was deprived from attending Board Meetings and voting on any agenda, which was placed before the Board of the 1st Respondent Company. The Respondent served a notice of Board Meetings held on 28.05.2012, i.e. after receipt of legal notice dated 28.03.2012. It is also stated that authorised capital of the 1st Respondent Company was increased from Rs.50.00 Lakhs to Rs.75.00 Lakhs during an Extra-Ordinary General Meeting held on 12.12.2011 which is contrary to statutory procedure prescribed. The Petitioners are not aware even the major event of the company in increasing the Authorized capital of the Company. They further averred that it is nothing but oppression of minority shareholders and mis-management of the 1st Respondent Company resulting in violation of several provisions of Companies Act, 1956.
7. It is further stated that the 1st Petitioner, after being educated in USA in Mechanical Engineering, he was keen on providing his experience to help the 1st Respondent Company. As his mother is a Director of the 1st Respondent Company, he offered his services to the company and also enquired with the company why the company was not involving the 3rd Petitioner in the affairs of the company.



However, the Respondents refused to avail the services of the 1st Petitioner. It is stated that the Petitioners by holding substantial stake of 33.15 % in the share capital of the 1st Respondent Company, which was founded under the aegis of their late father, are entitled to participate in the management and affairs of the 1st Respondent Company. They have also stopped the remuneration to the 3rd Petitioner without any reason and prior intimation 14 months ago.

8. The Petitioners further contended that they reliably learnt that the 2nd and 3rd Respondent have colluded with Shri M. Satyanarayana Reddy, who is the current shareholder of the 1st Respondent Company and the brother of 3rd Respondent and incorporated a separate entity, i.e. R.S. Precision Engineering Industries (RSPEI). It is also alleged, that RSPEI doing the same line of business of the 1st Respondent Company and operates from the same registered office of the 1st Respondent. It is also alleged that RSPEI is using all engineering and manufacturing resources of the 1st Respondent Company and thus siphoning the funds of the 1st Respondent Company. Several allegations were made against RSPEI including getting some contracts, which are stated to have been allotted to the 1st Respondent Company.

In the result the net worth of the 1st Respondent has considerably come down, resulting in decrease in the value of the shares of the 1st Respondent Company. It is alleged that the



Respondents have committed breach of fiduciary duty and resorting to oppression and mis-management of the affairs of 1st Respondent Company, warranting action by the Tribunal under Section 397/398 of the Companies Act, 1956. And, the Respondents are liable to compensate the Petitioners for the loss of earnings due to the above collusion by the Respondents with the said Industries.

9. The Petitioners further allege that the majority shareholders of the 1st Respondent Company have exercised their powers with an ulterior motive and the same are unfair and oppressive and continued to act detriment to the interest of the Petitioners. The powers of the majority shareholders should be used for the benefit and for the interest of the company and to enhance the value and profits of the company but they should not play fraud on minority shareholders. Accordingly, they prayed the Tribunal to allow the Company Petition as prayed for.
10. The Respondents have opposed the company petition by filing a detailed counter by disputing various allegations/ contentions raised by the Petitioners. It is stated that the Petitioners have filed the present petition with unclean hands and malafide intentions on non-existing cause of action abusing the process of the Court and provisions of the Companies Act, 1956. It is stated the Petition is filed under Rule 6 & 9 and 11(b) of the Company (Court) Rules, 1959, which has no application to the present Petition and thus the Petition itself is liable



to be dismissed in limini without going into the merits of the case. They have also stated that material papers filed along with Company Petition at page No.159 to 237 were also under the said Rules, which are not within the purview of the Hon'ble Company Law Board.

11. It is contended that the entire case of the Petitioners was based on the fallacious plea that Respondent should purchase the shares allegedly held by the Petitioners in the 1st Respondent Company at a fair price and, also sought a share in the earnings/profits made by RSPEI, which is a proprietary ship concern owned by someone else.
12. It is contended that Petitioners are altogether holding 17.62% and not 33.15% shares as contended. The Petitioners have failed to get transfer the shares of Late Sh. M. Koti Reddy, to his legal heirs though they are advised to do so. It is stated that Sh. M. Koti Reddy was neither a shareholder nor the Director of the Respondent No.1 Company for a period of 3 years as he was in full employment with Sahney Paris Rhone Limited. However, the Respondent No. 2 & 3, who also worked with the said Sahney Paris Rhone Limited, have left their jobs and incorporated the first Respondent Company and they are acting as Whole-Time directors, since its inception from the year 1983. And they are contributing immensely for the development of the company. It is only after the commencement of the production;



Sh. Late M. Koti Reddy joined the 1st Respondent Company in the year 1986, after resigning from the said Sahney Paris Rhone Limited. It is further asserted that the Respondent No. 2 & 3, with their hard work made the company to prosper, but whereas said Sh. Koti Reddy was not there in the initial stage when the Company has struggled a lot for its existence in the market. It is denied that Mr. Koti Reddy was alone responsible for the progress of the company and stated that the Respondent No. 2 & 3 have also equally contributed for introduction of Computer Numerical Control (CNC) Technology. The said Sh. Koti Reddy, after joining the 1st Respondent Company, was made Executive Director and, later on, elevated to the post of the Chairman of the Company as a mark of respect for him as Respondent No. 2 & 3 were close friends and colleagues of him. In good faith and trust, all the statutory books, records and documents of the 1st Respondent Company are kept under the custody of Late Sh. Koti Reddy, as all shareholders of the company are family members of three directors and each holding almost 1/3rd of the total paid-up share capital.

13. It is denied the allegation of Petitioners that the share certificates belonging to Late Sh. Koti Reddy were taken away by them. In fact, some of the share certificates, after effecting transfer, were lying in the office and the same was kept for safety purpose on the advice of



Petitioner No.3. It is further stated the Petitioners without following due process of law for transfer of shares are blaming the Respondents for their failures. The Petitioner No. 1 & 3 were informed on 16.03.2013 by the Respondent No.1 Company to submit required documents for effecting transmission of shares. However, the Petitioners ignored it for the reasons best known to them.

14. It is further submitted that Sh. T. Jayabarathi, who is the wife of Late. Sh. Koti Reddy, was made a director, soon after his death. She was made a director in order to see that all the promoters would be adequately represented on the Board. However, she failed to submit DIN in spite of repeated request. On humanitarian grounds, the Respondent No. 2 & 3 used to support the Petitioner No.3 and her sons by paying them cash, on the death of Sh. Koti Reddy. As the 3rd Petitioner was not a Whole-Time Director, she is not entitled for any remuneration. So the contention of the petitioner that she was paid as remuneration is not correct and the same was denied. It is further stated the Petitioner No.3 is in the habit of not attending the Board Meeting and Shareholders Meetings and the same was followed in the past also during the Chairmanship of her late husband.
15. The Respondents stated that they are following the same procedure, as to what Late Sh. Koti Reddy followed, while he was alive. When

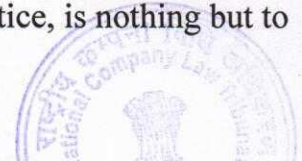


Petitioner No.3 raised about non-issue of notices etc. the company used to issue notices to the Petitioners about the Company Board Meeting and shareholders meetings and denied that there was malafide intention on their part.

16. It is further stated that though authorised share capital was increased from Rs. 50.00 lakhs to Rs. 75.00 lakhs, to provide more financial strength to the 1st Respondent Company, no shares were allotted to anyone, pursuant to the share enhancement. So there should not be any grievance to anybody in this regard. They further stated that the Directorship of Respondent No.1 Company is not hereditary and, there is no discrimination meted out to the Petitioners by the Respondents. It is further stated that RSPEI is a proprietary concern owned by one M. Satyanarayana Reddy and operating his own business from a leased premises at Plot No.26, Phase IV, IDA, Jeedimetla, Hyderabad - 500055. Whereas, the Respondent No.1 Company has its registered office and works at D-22, Phase-IV, (Extn.) I.D.A. Jeedimetla, Hyderabad-500055. Mr. Satyanarayana Reddy, being a relative of Respondent No.3, cannot be a disqualification to run his own business as per the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. It is also stated the allegations made against the said company are totally false and denied.



17. Heard Sh. P. Ravi Prasad, Learned Counsel for the Petitioners and Dr. S.V. Ramakrishnan, Learned Counsel for the Respondents and, have perused the all the pleadings along with material filed by the respective parties.
18. The Learned Counsel for the Petitioners, while reiterating the pleadings made in the petition and in the rejoinder, has also filed his written arguments dated 21.09.2016. It is contended that taking and withholding the share certificates illegally by the Respondents would amount to deliberate gross mis-conduct and caused prejudice to the Petitioners. By the said act of the Respondents, the Petitioners were deprived of their right to sell their shares. He relied upon the Order dated 21.03.1961 passed in Mohan Lal Chandumall and Ors Vs Punjab Company Limited, Bhatinda and Ors. passed by the Hon'ble High Court of Punjab (AIR 1961 P & H 485). Wherein it is held that denial to shareholder of his rights to vote and receive dividend amounts to an act of oppression. It is stated that the Respondents have also admitted that withholding of share certificates of the Petitioners in their reply dated 10.04.2012. Denying the Petitioner No.3 to participate in the affairs of the Respondent No.1 Company is a clear act of oppression. The action of the Respondents not to increase the remuneration to the Petitioner No.3 and further stopping totally from December 2001 without any reason or prior notice, is nothing but to



humiliate and oppress the Petitioner No.3, especially when other Directors are receiving their remuneration.

19. It is further contented by the Petitioners that the Respondents intentionally not served any statutory notice of any Board Meetings of the 1st Respondent Company to the Petitioner No 3. The Respondents started serving notices only after the legal notice received from the Petitioners on 28.03.2012. He relied upon, the decision rendered in the case of Farhat Sheikh vs Esemn Mettalo P. Ltd. (1966 87 CompCas 290 CLB), in support of his case. It is held therein that suppressing the statutory notice to some of the members is an act of oppression. In the present case also, the Respondents failed to give any statutory notice for the meetings of the Respondent No.1 Company. It is further stated, that the Respondents have arbitrarily increased the Authorised capital of the Respondent No.1 Company and the same is illegal and ultra-vires and it is liable to be set aside. In support of his contention, he relied upon the case of Dr. Dileep Makhija Vs Arun Mittal & Ors. (2003) 47 SCL 241: (2004) CLC 209 and Kamal Kumar Dutta Vs Ruby General Hospital Limited (2006) 7 SCC 613, Allianz Securities Limited Vs Regal Industries Limited [(2000) 37 CLA 250 (CLB)] and Kamal K. Data (Dr.) Vs Ruby General Hospitals (2000) 36 CLA 214 (CLB).



20. It is further contended that the petitioners were learnt that the Authorized Share Capital of the company was raised from Rs. 50 lakhs to Rs. 75 lakhs and it was not meant for the benefit of the company and it was simply and solely for their personal aggrandizement of the Respondent No. 2&3. He relied upon the decision rendered in *Jadabpore Tea Co Ltd Vs Bengal Dooars National Tea Co. Ltd (Cal) (1984) 55 Comp Cases 160*, in support of his case. It is stated that the action of the respondents in excluding the Petitioners from the participation in the management of the affairs of the Company is nothing but an oppression and mismanagement of affairs of the Company warranting action under Section 397 & 398 of Companies Act, 1956. It is also submitted that depriving the opportunity of share-holders of their rights to vote and receive dividends amounted to oppression as held in *Mohanlal Chandumal Vs Punjab Co Ltd (supra)*. It is also relied upon the order rendered in *Tea Brokers P Ltd v. Hemendra Prosad Barooah (1998) 5 Comp LJ 463 (Cal)*, where the Division bench of Hon'ble Calcutta High Court held, even a single act of the company depriving a privilege and right of shareholder, even done on a particular occasion would be an act of oppression, if such act is of continuing nature.
21. It is further stated that the respondents have unreasonably refused to accept the transfer or transmission of shares to the legal heirs of Late Sh. Koti Reddy and the same is contrary to provisions of law as well



as Clause 1.34, page 5 of the Articles of Association of the First Respondent Company. This clause clearly states the procedure for transfer of shares upon the death of a member. In support of this contention, the petitioners relied upon the decision rendered in Mrs Gajarabhai v. Patny Transport Pvt Ltd (AIR 1966 AP 226) wherein it was held that unreasonable refusal to accept transfer or transmission of shares was held sufficient to warrant and order u/s 397 of Companies Act, 1956.

The refusal of Respondent to transfer the shares of Late Sh. M Koti Reddy to the Petitioners as legal heirs will not only affect the Petitioners personally but their families as well. In this context, he relied upon the decisions rendered in Surat Electricity Co. Ltd v. Union of India, AIR 1995 Bom 377 and Texmaco Ltd., Re (1996) 1 Comp LJ 154.

22. The learned Counsel for the petitioner further stated that the non-service of statutory notice to the Petitioners was adopted as a strategy to ride a rough shot over the interest of lesser number of shares. It is baseless contention of Respondents that notice was not served to Petitioners because they were the relatives. It is not in dispute that the notice of meetings were not issued to Petitioners. It is only after the Petitioners got issued Legal notice, they issued notice of meetings on 28.05.2012. The major decisions like increase in authorized share



capital of Respondent No.1 Company has to be taken only after informing the share-holders of the company. The action of the Respondents in not giving any notice to share-holders is nothing but an oppressive action to members and constitutes mismanagement of companies. The Hon'ble courts upheld the same principle in following cases- Allianz Securities Ltd v. Regal industries Ltd (2000) 37 CLA 250 (CLB), Kamal K. Datta (Dr.) v. Ruby General Hospitals (2000) 36 CLA 214 (CLB) and Shantidevi Pratapsingh Gaekwad v. Sangramsingh P. Gaekwad, (1996) 1 Comp LJ 72 (Guj).

23. It is further contended by the petitioners that Respondent No. 2 & 3 along with the shareholders of Respondent No. 1 Company and also a brother of Respondent No. 3, Sh. Mavuluri Satya Narayana Reddy, incorporated an unregistered Partnership firm in the name and style of M/s RS precision Engineering Industries (RSPEI) in the same line of business as that of Respondent No.1 Company. The respondents have not denied that RSPEI is not using the manufacturing resources of Respondent No.1 Company. It is further stated in this context that the manufacturing of magazines (being the nature of business of both R.1 Co & RSPEI) involves cutting, bending, hitting and trimming magazines, etc. In support of this contention, the Petitioners produced the list of machineries present in both Respondent No.1 Company and RSPEI. The Respondent No 2& 3 are illegally diverting the business



of Respondent No.1 Company to the said RSPEI resulting in pecuniary loss to the company. They have mentioned so many collusive activities of Respondent No. 2& 3 with that of RSPEI. With the result of these illegal activities, the share value of Respondent No.1 Company was considerably reduced. It is contended that it is settled principle of law that no director can act in breach of fiduciary duties and he cannot enrich himself at the cost of Company. In order to verify the illegal activities of Respondent No. 2& 3, it is necessary to appoint an auditor to scrutinize & verify the books of accounts, vouchers, etc. In this context, we relied upon the following decisions of G. Ramana Reddy v. Vijaya Durga Estates (P.) Ltd [2008] 83 CLA 135, O. Padmanabhan v. Supra Hi-Tech Electro Equipment (P.) Ltd [2004] 49 SCL 556 (CLB), A.M. Gopalan v. Panchamy Pack Kerala (P.) Ltd [2007] 78 CLA 57 (CLB).

24. It is further contended that the Respondents deliberately not informed the Petitioner No. 3 being a Board of Director and it is nothing but mismanagement and in this context, he relied upon the decision rendered in Ador-Samia Ltd v. Indocam Engineering Systems Ltd (2000) 100 Comp Cas 370. Further he relied upon, Atmaram Modi v. Ecl. Agrotech Ltd and Ors (1999) 98 CompCas 463 CLB, Smt. Usha Krishna and Ors V. Aswathi Inns Private Limited and Ors. (2005) 4 Comp LJ 157 CLB, Ultrafilter GMBH v. Ultrafilter (India) P. Ltd., and Anr (2012) 106 CLA 163 (Kar), Chander Mohan Jain v. Crm



Digital synergies P. Ltd., and Ors (2008) 142 CompCas 658 CLB, S. Varadarajan and Anr v. Udhayem Leasings and Investments (2005) 125 CompCas 853 CLB, Yashovardhan Saboo v. Groz-Beckert Saboo Ltd (1995) 83 CompCas 371, Tennora Mauritius Ltd v. Bangalore Union Seervices Limited (2004) 122 CompCase 199, M.S.D. Chandrasekhar Raj v. Shree Bharathi Cotton Mills Pvt Ltd (2005) 57 SCL 72.

Therefore, the Learned Counsel for the Petitioner prayed the Tribunal to allow the present Company Petition and grant reliefs as prayed for.

25. Dr. S.V. Rama Krishna, the learned Counsel for Respondents has raised a preliminary objection about the maintainability of present Company Petition as the same was filed under Rules 6, 9, 11(b) of Company (Court) Rules, 1959 which has no application in present petition and not filing the present petition following the relevant rules. His liability is to be dismissed without going in to the merits of the case. He further stated that material papers at Page Nos. 159-237 filed by the petitioner are also filed under said Rules. He further argued that the Petitioner too agreed that the Petitioners have filed the above Petition as per Company Court Rules as per Para 4 of the Rejoinder dated 13th Sept, 2013 filed by the Petitioners. He has also submitted a memo dated 21st Sept 2016 by giving the attendance particulars of



Mrs. Jayabharathi (Petitioner No.3) in the Board meeting of Respondent No.1 Company from 28.05.2012 to 29.08.2016. The following are the particulars:

For the Financial Year 2012-13:

Sl. No	Date of Meeting	Status of Attendance
1	28.05.2012	Attended
2	4.09.2012	Attended
3	24.12.2012	No request for Leave of Absence
4	25.03.2013	Received request for leave of absence

For the financial Year 2013-14

Sl. No	Date of Meeting	Status of Attendance
1	17.06.2013	No request for Leave of Absence
2	26.08.2013	No request for Leave of Absence
3	23.12.2013	Attended
4	24.03.2014	No request for Leave of Absence

For the Financial Year 2014-15

Sl. No	Date of Meeting	Status of Attendance
1	23.06.2014	Attended



2	01.09.2014	Received Request for Leave of Absence
3	15.12.2014	No request for Leave of Absence
4	24.03.2015	No request for Leave of Absence

For the Financial Year 2015-16

Sl. No	Date of Meeting	Status of Attendance
1	23.06.2015	Attended
2	15.12.2015	No request for Leave of Absence
3	29.02.2016	Attended

For the Financial year 2016-17

Sl. No	Date of Meeting	Status of Attendance
3	23.05.2016	No request for Leave of Absence
4	29.08.2016	Attended



In the light of the above, the Learned Counsel for the Respondents contended that the petitioner No. 3 is so casual in nature in attending the Board meetings of the Company. Therefore, he has contended that there is no prejudice caused to the Petitioners for not issuing notices earlier for the meetings of the Company.

26. The Learned Counsel for the Respondents also relied upon the judgment of Hon'ble Supreme Court of India in Chatterjee Petrochem (I) Pvt Ltd v. Haldia Petrochemicals Ltd and Ors. (AIR 2012 SC 2753). He has pointed that para 94 and 96 of the said judgment are relevant to present issue. Para 94 reads as under:

“The law relating to grant of relief on a petition under Section 397, 398 and 402 of the Companies Act, 1956 has been crystallised in various decisions of this Court, including those cited on behalf of the parties. The common refrain running through all these decisions is that in order to succeed in an action u/s 397 and 398 of the Companies Act, the complainant has to prove that the affairs of the Company were being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. For better appreciation of the above, Section 397 of the above Act is extracted herein below:

Application to Company Law Board for relief in cases of oppression.

(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Company Law board] for an order under this section, provided such members have a right so to apply in virtue of section 399.



(2) If, on any application under sub- section (1), the Company Law Board] is of opinion-

(a) that the company's affairs are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding- up order on the ground that it was just and equitable that the company should be wound up; the Company Law Board may with a view to bringing to an end the matters complained of, make such order as it thinks fit.

However, as was observed by this Court in Shanti Prasad Jain's case (supra) the law has not defined as to what would amount to 'oppressive' for the purposes of Section 397 and it is for the Courts to decide on the facts of each case as to whether such oppression exists which would call for action u/s 397." It was also emphasized that the conduct of the majority shareholders should not be oppressive to the minority, nor must be burdensome and operating harshly up to the date of petition.



27. As stated by Hon'ble Supreme Court, the above judgment of Chatterjee Petrochem (I) Pvt Ltd v. Haldia Petrochemicals Ltd and Ors. (AIR 2012 SC 2753), it is settled position of law that court/tribunals have been empowered to interfere u/ 397, 398 and 402

of Companies Act, 1956, whenever, the affairs of the company are conducted in a manner to prejudicial to public interests or in any **manner prejudicial with respect to member or members as enumerated in Sec.397**. It is also not in dispute as to what is oppression for the purpose of applying the Section 397 of the Companies Act, 1956. However, it would depend on the facts and circumstances available in each case and has to be decided as to whether the impugned actions being harsh, burdensome, lapse in probity and fair-dealing and then has to decide whether those actions are legal or illegal. Only in case, if the Tribunal comes to a conclusion that ingredients of Section 397/398 of the Companies Act, 1956 are available with supporting evidence, then the Tribunal can interfere in the affairs of the company, to set the affairs of company on a track and to set its business on normal course of action. The salient feature of the Companies Act, 1956 is to maintain a proper balance between the rights of majority and minority shareholders. Though the Act broadly recognizes the principle of rule of Majority, but at the same time, it protects the minority rights by various provisions.

28. The scope of interference by Courts/Tribunal has been laid down as early as 1843 in the case of Foss v. Harbottle (1843) 2 Hare 461. The basic rule relating to the administration of aforesaid company is laid down in the said case in the following words:



“the courts will not, in general, intervene at the instance of shareholders in matters of internal administration; and will not interfere with the management of a company by its directors so long as they are acting within the powers conferred on them under the articles of the company. Nothing connected with the internal disputes between the shareholders is to be made the subject of an action by shareholders.”

29. In the light of settled principle of law with regards to scope of interference by the Tribunal in the case filed u/s 397/398 of Companies Act, 1956, in cantena of cases as referred to above, we will examine the fundamental issues raised by both the parties in their pleadings, written arguments, oral arguments.

30. After analysing various contentions raised by Shri. P. Ravi Prasad, the Learned Counsel for Petitioners, the following issues fell for consideration in the case to decide as to whether these acts constitute oppression and mismanagement warranting interference by the Tribunal u/s 397/398 of the Companies Act, 1956:

- a. The shares belonging to Mr. M. Koti Reddy was not transferred to his legal heirs and kept illegally with the Respondents till a legal notice was issued on 28, May 2012.
- b. The Petitioner No.3 was never allowed or provided an opportunity



to be involved in the management of the Respondent No.1 Company and no notice whatsoever was given till the legal notice got issued to the respondents.

- c. No notice was given for extraordinary general meeting held on 12th Dec, 2011 wherein the authorized capital of the Co was increased from Rs.50,00,000 (Rupees fifty lakhs only) to Rs. 75,00,000 (Rupees seventy five lakhs).
 - d. The Respondents have colluded with Mr. Satya Narayana Reddy in establishing a similar separate entity like that of Respondent No.1 Company, in the name of RS Precision Engineering Industries, which is nothing but oppressing the minority shareholders and mismanagement of affairs of Respondent No.1 Company.
31. So far as the first issue is concerned, it is not in dispute that the shares of the Late Sh. M. Koti Reddy was kept with the Respondents for some time with an intention to keep them under safe custody and those shares were returned, after the request made by Petitioners. When the representation dated 15.02.2013 was submitted by Mr. M. Sridhar Reddy, legal heir and also a representative of other legal heirs of Late Sh. M.Koti Reddy requesting to transfer the shares of Late Sh. Koti Reddy among them as per ratio mentioned in representation, a reply dated 16.03.2013 was given by replying that they kept quite



for the issue for more than 12 years by asking to submit original documents required for the transmission of shares. It is also on record that the petitioners obtained a family member certificate only on 15th Sept, 2005 though Sh. Koti Reddy expired on 17th August, 2001. In any case, the Respondents were ready to transfer the shares provided all the required documents were submitted as per law.

32. So far as the second issue of notices about the Board meeting of the Company is concerned, the Respondents stated that it was the practise adopted by Late Sh. Koti Reddy to inform about the Board and Shareholders meetings over phone as all the shareholders are family members of 3 directors, each holding atleast 1/3rd of Paid-up share capital and 1 each is acting as directors of Company. In this regard, as stated above, the Respondents started issuing notices when the Petitioner raised objection about the non-issuance of notices. The memo filed by learned counsel for Respondents dated 21st sept, 2016 gives details of notices given to petitioner No. 3. However, most of the times, the petitioner No. 3 was absent (without obtaining Leave of absence on many occasions) from attending the meetings even though she was intimated about it.

33. So far as the third issue is concerned, the Respondents have not denied that the Authorized Share Capital was increased, but they have stated that they have not implemented it.



34. So far as the fourth allegation of collusion in establishing a parallel company in the name and style of RSPEI is concerned, the said RSPEI was not made party to the present Company petition to test the veracity of those allegations, after hearing that Industries in compliance with Principles of Natural Justice. It is settled position of law, that every citizen of country is at liberty to profuse his own business as guaranteed under Article 19(1)(g) of Constitution of India. So there is no bar for Mr. M. Satya Narayan Reddy to run any business as per law. The allegation made by the Petitioners were denied by Respondents regarding utilizing all machinery of Respondent No. 1 Company by said RSPEI. In the absence of RSPEI is not made party to present Company Petition, it is not proper for us to go into minute details regarding allegations made by Petitioners against RSPEI. We are of view that Mr. M. Satyanararyana Reddy can start and run his own business in accordance with law. For the reasons best known to petitioners, the said RSPEI was not made a party to the Company Petition though several serious allegations were made against it.

35. The issues raised by Dr. S.V. Ramakrishna, Learned Counsel for Respondents can be summarized as follows:

- a. The present Company Petition was filed with unclean hands and malafied intention on non-existing cause of action and same is nothing but abusing the process of court and clauses of Companies

Act, 1956. He has seriously opposed the company petition as the same was filed under Rule 6, 9, 11(b) of Company (Court) Rules and same has to be rejected in limini without going into the merits of the case.

- b. Secondly, he has contended the procedure adopted by Sh. Koti Reddy was followed that by intimating the Board meetings and shareholders meeting by phone till the Petitioners got issued a legal notice. After the Petitioners raised about the non-issuance of notices, they started issuing notice to Petitioner No. 3 and submitted memo dated 21st sept, 2016 giving details about attendance particulars of Petitioner No. 3. So he contended that it is normal course of action and no malafied intention was present in non-issuance of notices.

1. So far as the first contention of Respondents with respect to maintainability of Company Petition, it is to be seen that only the present CP bearing No.10 of 2013 is listed before the Board. Though, the petitioners filed documents from Page No.159-237, they were not processed and listed before the Bench to consider for interim relief. In fact, no interim relief was considered in the case. As per Office note dated 27.02.2013 of the Bench Office (CSC), the present petition filed u/s 397/398 of Companies Act, 1956 was scrutinized and certified that the petition was filed in Form No.1 of Company Law Board Regulations, 1991 with all required documents, that the



petitioners constitute 4 in Number, comes to more than 1/10th of number of members to maintain the present petition. After returning of the Petition by the Registry, there were huge defects, the petitioner complied with all the objections and then only, the petition was registered and only then numbered as CP No. 10 of 2013. Hence the contention of Respondents that the present petition was not filed in accordance with Company Law Board rules is not correct and thus it is rejected.

2. It is not in dispute that Respondent No. 1 Company was registered under Companies Act, 1956 as per the Certificate of Incorporation dated 19.9.1983 as a Private Limited company. As such, it is bound by all the clauses of Companies Act, 1956 and subsequent amendments made thereof.
3. When a person becomes a member of a company, he's entitled to exercise all the rights of the member until he ceases to be a member in accordance with clauses of the Act. Members of a company can enjoy certain rights in the individual capacity and they can be enforced duly. These rights are contractual rights which cannot be taken except with the written consent of member concerned. Notice of the general meetings of the company is one of such right and the same was dealt with u/s 171-186 of Companies Act, 1956. These sections dealt with various procedures of conducting of meetings, issuance of notices, etc. The law further provides that a defaulting



officer of a company shall be punishable with fine upto Rs. 5000 (Rupees Five Thousand only).

Section 286 of the Companies Act, 1956, deals with notice of meetings to the Directors. It is stated as follows:

286 (1): notice of every meeting of the board of Directors of a company shall be given in writing to every director for time being in India, and at his usual address in India to every other director.

2. Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to Rupees one thousand only.

As per the above provisions, every shareholder and director are entitled for a notice of Board meeting/shareholder meeting. In the instant case admittedly, all the petitioners are share-holders and Petitioner No.3 is a director of Respondent No.1 Company. Admittedly, no notice whatsoever was given till the Petitioners got issued legal notice about mismanagement and oppression in Respondent No.1 Company. It is also not in dispute that several major decisions including, enhancement of authorized share capital and collusive activities in establishing a parallel company have taken place in the absence of petitioners. There is no doubt that these things constitute oppression and mismanagement of affairs of Respondent No.1 Company. However, the Respondents are still willing to transfer shares of Late Sh. Koti Reddy in accordance with the law. The



Respondents have also started issuing notices to the Petitioners from 28.05.2012. Moreover, the decision of enhancement of authorized capital from 50 lakhs to 75 lakhs is not so far implemented.

36. After analysing the entire issue, we are of the opinion that the actions of Respondents are contrary to the Principles of Natural Justice and oppressive to the Petitioners and the affairs of the company are not being run in just and fair manner. However, instead of ordering to wind up of the Company, it is just and equitable to bring to an end the matters complained of, we are disposing off the company petition with the following directions:

- a. The petitioners are directed to submit the shares of Late Sh. Koti Reddy along with all documents in support of it to respondents within 3 weeks from the date of receipt of order and the Respondents are directed to transfer the shares to respective legal heirs of Late Sh. Koti Reddy to his legal heirs on proportionate basis as per the agreement within 3 weeks from the date of receiving all the relevant documents from Petitioners.
- b. We declare that the decision to enhance the authorized Share capital from Rs.50,00,000 to 75,00,000 as null and void. However, the Respondent No.1 Company is at liberty to put the same before the next meeting to be conducted after duly giving notice all the concerned parties including the petitioners in accordance with law.



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- c. Since the RS Precision Engineering Industries is not a party to present Company Petition we are not inclined to going into the allegations of fraud and collusion by the Respondent No. 2 & 3 with the RS Precision Engineering Industries. Prima facie, we hold that every citizen of the Country is entitled to start and continue any profession in accordance with law.
- d. We direct the Respondent No.1 Company to convene a board meeting and shareholders meeting duly issuing notice to all the parties including the petitioners in accordance with the provisions of Companies Act, 1956 within a period of 2 months from the date of receipt of copy of the Order to sort out all the disputes of the Petitioners and Respondents and further direct them to follow all the procedures as prescribed in the Companies Act, 1956 and Companies Act, 2013 to convene Board meeting or Shareholder meeting in the future.
- e. Other reliefs as prayed for, are hereby rejected as they are purely administrative in nature which, are part and parcel in running of the company and the applicants fail to make out any case in favour of those reliefs.

Sd/-

Sd/-

RAVIKUMAR DURASAMY

RAJESWARA RAO VITTANALA

MEMBER (TECH)

MEMBER (JUDL)



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