

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

C.A. NO. 111 OF 2016

IN

C.P. No. 50/397, 398/CLB/MB/MAH/2016

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 397 & 398 of the Companies Act, 1956 and
241, & 242 of the Companies Act, 2013.

BETWEEN:

Shri Shyam Haribhau Sapkal & Ors. ... Petitioners

Versus

M/s. The New Akot Cotton Ginning & Pressing)
Company Limited. & Ors.) ... Respondents

PETITIONER:

Shri Shyam Haribhau Sapkal & 60 Ors.

RESPONDENTS

1. M/s. The New Akot Cotton Ginning & Pressing Company Limited.
2. Shri Narendra Vasant Rao Joat
3. Shri Shardul Anat Chawk
4. Shri Rahul Devrao Digambar
5. Shri Rajendra Ballal Digambar
6. Dhri Vishwanathappa Gopalappa Dhake
7. Shri Anirudha Chaudhary

PRESENT ON BEHALF OF THE PARTIES:

FOR THE PETITIONERS

1. Mr. Mikdad Zumnerwala, Advocate
2. Mr. Shyam Haribhau Sapkal, Petitioner No.1.

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FOR THE RESPONDENTS

1. Mr. Mahesh Athavale, Practicing Company Secretary.

ORDER

Reserved on: 18.10.2016

Pronounced on: 7th Nov.2016

1. The Respondents of the main Company Petition have filed the impugned Application No.111/2016, now under consideration, on 16th May, 2016.
2. From the side of the Applicants and from the side of the Respondents, Ld. Counsel were present and heard.
3. The Applicant has raised a legal issue in this Application that in terms of Section 399 of Companies Act, 1956, the Petitioners of C.P. No.50/2016 were not having the requisite percentage of shareholding, therefore, the Petition is not maintainable. As per the allegation in this Application, the shareholding by Petitioner No. 1 & Petitioner No.2 was less than the prescribed limit. As per the argument of Ld. Representative, the Petitioner No.1 and Petitioner No.2 have only signed the Petition and rest of the Petitioners have not signed this Petition, therefore, the shareholding of the said two Petitioners should only be considered to decide the maintainability of the Petition. According to this Application, Petitioner No. 1 was holding only 10 equity shares of Respondent No.1. Likewise, Petitioner No.2 was holding 10 equity shares of Respondent No.1 Company. The percentage of the total holding of the issued and paid-up share capital was only

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0.52% by the Petitioner Nos. 1 & 2. After the right issue, their shareholding had further reduced to 0.25%.

3.1 Apart from the above legal question revolving around the percentage of shareholding, the next legal objection of the Applicant is that the Company Petition was not filed in terms of Order 6, Rule 14 of CPC. The Petition in question was signed admittedly by the Petitioner Nos. 1 & 2. The rest of the Petitioners have given the authority. But the said authority in favour of Petitioner Nos. 1 & 2 was subject to several doubts, therefore, signing of the Petition by Petitioner nos. 1 & 2 for and on behalf of the rest of the Petitioner was illegal and not as per the mandatory requirement of CPC. He has further elaborated that if the shareholding of Petitioner Nos. 3 to 61 is excluded for the purpose of counting of 10% shareholding, then the shareholding of Petitioner Nos. 1 & 2 was much below the mandatory requirement of Section 399 of Company Act, 1956. Ld. Representative has also informed that the date on which the authority was given to the Petitioner Nos. 1 & 2 was in contradiction with the date on which the Petition was signed, hence the documents and the very basis on which the Petition had been filed are void and illegal. It has also been pleaded that the Petition is filed after a delay of 14 years, hence the allegations raised are not sustainable in the eyes of law. In support of the contention that the Power of Attorney was not as per law, reliance was placed on certain decisions listed below. of Hon'ble Supreme Court in the case of

4. From the side of the Respondents (Petitioners of the main Petition) , Ld. Representative has drawn the attention on the Reply wherein it was vehemently pleaded that the Petition is maintainable firstly on the ground that the Petitioner Nos. 1 to 61 are registered

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shareholders and absolute owners of 708 equity shares of the Respondent No.1 Company. Those share were fully paid-up, each having a face value of Rs.150/-. It has also been brought to the notice that the Petitioners have paid all costs and other sums in respect of their respective shareholdings. It was further elaborated that the Respondent No.1 Company was having 302 members in total and the shares subscribed were 3,840 in number. Another fact has also been brought to the notice that the position of post right issue is that the Petitioners are now holding 1,298 fully paid-up equity shares of the Respondent No.1 Company. Hence, it is argued that since the total shareholding is meeting the requirement of the provisions of Section 399 of the Companies Act, 1956. Therefore, the legal question of maintainability should be rejected. Further, it has also been pleaded that the signatures of all the Petitioners have taken in a routine manner and thereafter the Petition was filed, hence there was no irregularity in filing the Petition. The Ld. Counsel has explained that the objection in respect of the dates on which the consent was given by rest of the Petitioners was matching with the other dates and the documents were prepared in the normal course. The Applicant has merely raised certain doubts without giving any evidence, hence, such a baseless allegation should be dismissed, concluded the arguments.

5. Certain case laws cited by both the sides are listed below:-

- (i) ***P. Punnaiah and others Vs. Jeypore Sugar Co. Ltd. and others cited as Civil Appeal No. 1899 of 1981 dated 6th April, 1994.***
- (ii) ***Shri Jiwan Mehta Vs. Emmbros Forging (P) Ltd. and Ors. cited as Company Petition No. 60 of 2004 dated 20th***

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November, 2007, Company Law Board, Principal Bench, New Delhi.

- (iii) Shri Gian Gupta and Shri Ashish Gupta Vs. Siel Limited and Ors. cited as Company Petition No.24 of 2002 and C.A. 102 of 2002 dated 27th May, 2004, Company Law Board, Principal Bench, New Delhi.**
- (iv) Shri A.P. Jain Vs. Faridabad Ltd. and Ors. cited as C.P. No.5 of 1997 dated 27th July, 1998, Company Law Board, Principal Bench.**
- (v) Shri Harikumar Raja Vs. Sovereign Dairy Industries Ltd. cited as Company Petition No.81 of 1998 dated 1st January, 2001, Company Law Board, Principal Bench, Chennai.**
- (vi) Shri S.S. Laxminarayanan and Anr. Vs. Mather and Platt India Ltd. and Ors. cited as C.P. No.8 of 1996 and C.A. No. 99 of 1996 dated 17th July, 1997, Company Law Board, Principal Bench.**

6. Heard both sides at some length and carefully perused the material placed on record. At the outset, it is worth mentioning that the Ld. Counsel of the Applicant has tried to create a question in respect of the maintainability of the Petition (CP 50/2016) on two grounds – first, raised the objection about the authority granted by rest of the Petitioners to Petitioner Nos. 1 & 2 and, second, raised the objection on the ground of the percentage of shareholding of Petitioner Nos. 1 & 2. It is worth to mention at this juncture that ground no. 2 shall survive only if ground no.1 of the objection is upheld.

6.1 I have examined the contents of the main Petition and the persons signed the Petition in question. I have also examined the contents of the authority given by rest of the petitioners to Petitioner No ! & 2. It is worth to note that The Company was incorporated in the

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year 1903 by the Agriculturist if Vidrabha region. The purpose of laying down of procedure for filing a Petition / Suit is mainly to facilitate the legal proceedings so that a uniform system should be adopted by the Petitioners. Although it is correct that the procedure for filing of a Petition is to be followed methodically but minor lapses, if any, should also be ignored so that the litigant must not be thrown out of the litigation at the very threshold. For this purpose, in my humble opinion, facts and circumstances of each case are very relevant. One of the fact that the Petitioners mainly are the Agriculturist and housewives can not be ignored/ On this issue, I have also perused the case laws stated. However, keeping brevity in mind, need not to discuss elaborately.

6.2 As far as the shareholding of the Petitioners in question are concerned, the Applicants have not challenged the fact that the total shareholding of the Petitioner Nos. 1 to 61 was not 708 in number (pre right issue) and that the shareholding post right issue is 1,298 number of shares. It is noteworthy that the question of shareholding is a substantive matter going to be the root of the Petition filed, hence such a substantive matter requires proper adjudication after hearing both the parties at length. Hence, must not be decided in cursory manner while disposing an Interim Application. The case laws on this issue has also been examined and in the light of the law already pronounced, I am of the considered opinion that Company Petition No. 50/2016 is maintainable as per law to be decided as per law. As a consequence, the Application No. 111/2016 is hereby dismissed. No Order as to cost.

7. Let this C.P. be fixed for hearing on 22/12/16.

Dated: 07.11.2016

sd/-

Shri M.K. Shrawat
Member (Judicial)