

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

T.P No. 52/2016  
IN  
C.P. No. 65/2013

**IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTIONS 235, 237, 397, 398, 402, 403 AND 405 OF THE  
COMPANIES ACT, 1956**

**AND**

**IN THE MATTER OF  
M/s TECH VULCAN SOLUTIONS INDIA PRIVATE LIMITED**

Order Delivered on: 16<sup>TH</sup> August, 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)  
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**BETWEEN:**

1. Mr. Ajay Kumar Jain,  
L301, Cosmos, Magarpatta City, Hadapsar,  
Pune-411028.
2. Ms. Seema Jain,  
L301, Cosmos, Magarpatta City, Hadapsar,  
Pune-411028.

**PETITIONERS**

**Vs**

1. Tech Vulcan Solutions India Private Limited,  
302 Sai Gandhi Square, Opp. Sigma Tech Park,  
Whitefield, Bangalore-560066.
2. Mr. Pradeep Kumar Mishra,  
Villa 23, 10 Downing,  
Whitefield, Opp. Sai Lakshmi Industries,  
Kannamangala, Bangalore-560067.
3. Ms. Indu Mishra,  
Villa 23 and 24, 10 Downing,  
Whitefield, Opp. Sai Lakshmi Industries,  
Kannamangala, Bangalore-560067.
4. Mr. Anil Kumar Pandey,  
522, 26<sup>th</sup> Main, 1<sup>st</sup> Phase, 2<sup>nd</sup> Stage,  
BTM Layout, Bangalore-560076.
5. Mr. Vishal Vinayak Nikalje,  
102/C, Ashanagar Society, Near Chatishringi,  
Pune-411016.
6. Ms. Sandhya Pandey,  
522, 26<sup>th</sup> Main, 1<sup>st</sup> Phase, 2<sup>nd</sup> Stage,  
BTM Layout, Bangalore-560076.
7. Ms. Jayshree Nikalje,  
102/C, Ashanagar Society, Near Chatishringi,  
Pune-411016

**RESPONDENTS**

2. For the Petitioner(s): 1) Mr. . Mr. Ajay Kumar Jain, L301, Cosmos, Magarpatta City, Hadapsar, Pune-411028.  
2) Mr. Deepak P. Jain – Practicing Company Secretary authorized representative for Respondents.

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical) - Author**

### O R D E R

This Petition was originally filed before the Company Law Board, Southern Region, Chennai under Sections 235, 237, 397, 398, 402, 403 and 405 of the Companies Act, 1956 by the Petitioners seeking redressal for acts of continuing acts of oppression towards the Petitioners and mismanagement of the 1<sup>st</sup> Respondent Company by and at the behest of Respondents Nos. 2 to 7 as mentioned hereinafter and it was numbered as C.P 65/2013. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said case was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and re-numbered as T.P No. 52/2016.

The Petitioners has sought the following reliefs:-

- 1) Declare that acts of Respondent Nos. 2 and 3 to 7 as oppressive to the shareholders of the Company in general and the petitioners in particular and constitute acts of mismanagement.
- 2) Set aside the impugned allotment of 10000 equity shares on 10/11/2011 to the 4<sup>th</sup> and 5<sup>th</sup> Respondents which was done without notice to the petitioners and direct to restore the shareholding structure at the time of registration of 1<sup>st</sup> Respondent Company i.e., 25% shareholding of 1<sup>st</sup> Respondent to each of the Petitioners.
- 3) Direct to remove 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents as Directors from 1<sup>st</sup> Respondent Company board of Directors.
- 4) Direct that all salary, bonuses, dividends and other expenses including reimbursements for travel and otherwise that have been submitted by the Petitioners be reimbursed immediately.
- 5) Consequently, restrain the Respondents 2-7 from taking any action detrimental to the petitioners as Directors and shareholders of the company.
- 6) Restrain the Respondents 2-7 utilising the employees of the 1<sup>st</sup> Respondent from doing any business for Tech Vulcan Inc.
- 7) Restrain the Respondents 2-7 from transferring or soliciting employees of the 1<sup>st</sup> Respondent Company to Tech Vulcan Inc. or to any client of Tech Vulcan Inc.






- 8) Direct the original Articles of Association to be in effect and terminate the illegally altered Articles of Association.
- 9) Direct the payment of fees to 1<sup>st</sup> Respondent Company for use of services and resources by Tech Vulcan Inc.
- 10) Direct the respondents 2-7 to share with petitioners in soft copy of all the records, documents, assets and other papers pertaining to the 1<sup>st</sup> Respondent Company which are in their possession.
- 11) Grant such further or other reliefs, including orders as to costs as this Hon'ble Company Law Board may deem fit and proper in the circumstances of the case and render justice.

The averments made in the Petition are briefly described hereunder:-

It is averred that, the erstwhile Company Law Board, Southern Region, Chennai Bench on 11<sup>th</sup> December 2014 has passed the following Order:-

"Both the parties have agreed for the appointment of valuer to value the shares of the company. In view of the consensus between the parties, I hereby appoint Mr. Hitesha, Chartered Accountant of M/s H.P.S.N. & Company, Chartered Accountants Bangalore-20. It was also ordered that the company shall bear the cost of valuation. The company shall submit all the relevant records and documents to the valuer for valuing of shares and the valuer shall take the date of petition (20.09.2013) as the cutoff date for the purpose of valuation and the valuer shall send draft valuation report to both the parties for their comments if any and after receipt of comments the valuer shall prepare the final report and entire exercise of valuation shall be completed within period of 45 days and the same be submitted to the Bench. The valuation report submitted by the valuer shall be binding on both the parties. However, the percentage of the shareholding of the Petitioners will be determined by this Bench during the course of hearing which will be binding on the parties."

It is also averred that, the valuer was appointed by the Company Law Board, Southern Region, Chennai Bench after obtaining consent from both the petitioners. The valuer has sent his draft valuation report to both the petitioner as well as to the Respondents. The petitioner upon receiving a draft valuation report has sent mail to the valuer to furnish the copy of the documents he relied on the valuation for which the valuer has replied that he will not provide any documents and advised him to collect from the Respondent Company for which the Respondent Company could not provide any document copies to the petitioners.



The Respondents have filed Application before the Hon'ble High Court on 10<sup>th</sup> April 2015.

The Hon'ble High Court of Karnataka under paragraph 6 of its order dated 16.04.2015 stated that "the final valuation report is to be submitted by the valuer after considering the objections of the parties of the draft valuation report which is to be sent to the parties. The valuer may consider the objections of the parties and then submit his final valuation report. However, directing that the final report would be binding on the parties cannot be justified as the report would be binding only after the same is accepted by the Company Law Board, Southern Region, Chennai Bench to this extent we are at the opinion that once the final valuation report is submitted by the valuer in terms of the order dated 11.12.2014, in which Company Law Board, Southern Region, Chennai Bench shall invite objections from the parties and decide the same and it is only after passing of the order of the Company Law Board, Southern Region, Chennai Bench, the valuation report would be finally accepted and binding on the parties.

The Respondent to the petition have filed memo dated 15.12.2016 before this Tribunal in which they have made submissions on the valuation report:-

- (a) Allotments of equity shares taken place on 10/11/2011 wherein shares were allotted to Sri Vishal Vinayak Nikalje and Anil Kumar Pandey (5000 equity shares for each of them) and the share certificates were signed by Sri Ajay Jain and Pradeep Mishra which is disputed by the petitioners.
- (b) Anomalies observed in the valuation report received from the valuer.

- (1) The valuation report states that a draft has been shared with both parties to the petition for their comments and the report has been issued after considering the feedback of both, Appellant and Respondents.

We have received the final report without being supported by the workings for various assumptions and growth rates considered for the valuation and thus would have very limited scope to comment or provide any feedback,. However, based on the limited information provided, we have commented the following points.

- (2) Various documents like IT returns, proof of statutory payments, statutory returns, assessment orders and status, valuation of building, professional charges break-up and like were called for, but none of these documents were used for and no reference is found in arriving at the valuation numbers.








- (3) Management certified accounts for the period 1/4/2013 to 30/9/2013 was specifically insisted but no inference is drawn from these accounts.
- (4) Meeting and discussing with the representatives of the company for understanding the business, operations and obtain requisite clarification and explanations on the data provided – No such meeting was held.
- (5) Foreign standards are used for valuation and not Indian standards, reference to judicial pronouncements of America and reference to the Committee on Corporate Laws of the American Bar Association, accounting standards and pronouncements of Indian Courts are completely ignored, Techvulcan being an Indian Company applying of foreign laws would be incorrect.
- (6) The management draws salary and remuneration which is in par with market rates; hence removing such component is not acceptable.
- (7) While working out the adjustments for Equity value “Long term loans” of the year 2012 is considered while the values of 2013 should have been considered.
- (8) While arriving at the enterprise value, profits for the year 2013 are completely ignored.
- (9) Respondents prayed before this Hon’ble Bench to consider that passivity of the petitioners in building the business in the company and the repeated opportunities allowed by the Respondent-shareholders of the company to the Petitioner to contribute to the development of the company cannot become an occasion for the petitioner to gain windfall profits by claiming entitlement to the share in the business beyond their contribution. Surely, it is not the intent of the Respondent-shareholders to deny fair compensation to the petitioner but the occasion to determine what would be fair compensation, the Respondents are desirous of leaving in the hands of this able Bench and not the petitioners because the petitioner has as early as in 7<sup>th</sup> June, 2012 claimed Rs 8.25 crores for their shares (Annexure 5 to the written submissions by Respondents dated 20<sup>th</sup> January 2014).
- (c) The petitioner in their submissions dated 17.11.2016 have commented that, in the absence of copy of final valuation report they are providing their observations on the draft valuation report from para 7 onwards and under para 10 stated that they are not experts in the field of valuation so they cannot validate the share valuation report calculations and final value. Based on the assumptions that the valuer verified the accounts as authenticated petitioners are agreed on the valuation of Rs.7,15,00,000, so that the matter could be settled and all the involved parties could focus on other constructive works in the respective lives and further claimed interest at the rate of 18% and made prayer to direct the respondents to pay Rs.3,57,50,000 to the petitioners for their combined 50% shareholding of the company.



In view of the above submissions made and the decision of the Hon'ble High Court on 10<sup>th</sup> April 2015 and the Company Law Board, Southern Region, Chennai Bench order dated 11<sup>th</sup> December 2014. Both the comments of the Petitioners and Respondents be submitted to the valuer within 15 days from the date of this order. After considering the comments of both the parties, the valuer should submit valuation report to the NCLT within a period of 30 days.

In the result, both the parties are hereby directed to submit their comments in a sealed cover on the valuation report to the valuer within a period of 15 days and in turn the valuer has to submit his report with in a further period of 30 days.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL