

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

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IA 50/2017  
IN  
(T.P. 83/2016) CP 9/2016

UNDER SECTIONS 397 & 398 OF THE COMPANIES ACT, 1956

IN THE MATTER OF  
M/S SRI LAKSHMI NARASIMA MINING COMPANY (PVT.) LTD.

Order Delivered on 19<sup>th</sup> day of January, 2018

CORAM: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL

For the Petitioner(s) : Mr. Vivekananda.S, Advocate for VGB Assts.  
For the Respondent(s): Mr. Yelamanchili Prasad, Advocate for R1, R3 & R4  
Mr. G.V.Rao & Co., CA for R6 & R7

BETWEEN :

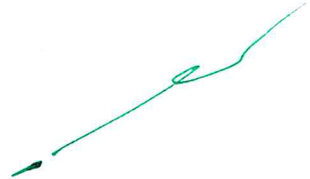
Ms.Nandana Reddy  
No.1004, Block-2, Suncity Apartments  
Sarjapura Outer Ring Road  
Bellandur, Bengaluru  
Karnataka -560 013

...

Petitioner

AND

1. M/s Sri Lakshmi Narsima Mining Company (Pvt.) Ltd.  
No.83, Ground Floor, 6<sup>th</sup> Cross, AG's layout  
New BEL Road  
Bengaluru – 560 054
2. Mr.R.Swarup Reddy  
No.9, Ranjith Road  
Suryanagar, Kotturpuram  
Chennai – 600 085
3. Mr.Yathin Reddy  
No.9, Ranjith Road  
Suryanagar, Kotturpuram  
Chennai – 600 085
4. Ms.Jansi Reddy  
No.9, Ranjith Road  
Suryanagar, Kotturpuram  
Chennai – 600 085



5. Mr.Imran Pasha  
No.9, Ranjith Road  
Suryanagar, Kotturpuram  
Chennai – 600 085

6. Mr.M.N.Pratap Reddy  
Flat No.205, 2<sup>nd</sup> Floor  
Vishwa Prakruthi Haveli  
Snehanagar Colony  
Above Reliance Fresh  
Amruthahalli Main Road  
Bengaluru – 560 024

7. Mr.M.Kiran Kumar Reddy  
Sri Lakshmi Nilayam  
No.266, 2<sup>nd</sup> Block  
RMV 2<sup>nd</sup> Stage, 4<sup>th</sup> Cross, 80 Feet Road  
Sanjaynagar  
Bengaluru – 560 094

.... Respondents

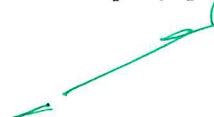
Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Heard on: 18.07.2017, 09.08.2017, 05.09.2017, 03.10.2017, 27.10.2017, 15.11.2017,  
30.11.2017, 20.12.2017, 11.01.2018

### ORDER

This application is filed by the 3<sup>rd</sup> respondent and also on behalf of the 4<sup>th</sup> respondent under Section 424 of the Companies Act for dismissal of the petition as not being in compliance with Section 399 of the Companies Act, 1956 read with Section 244 of the Companies Act, 2013, stating that the petitioner had filed the above company petition by swearing to a false affidavit stating that she has the requisite percentage of shares for meeting the eligibility criteria as specified under Section 399 of the Companies Act, 1956 and according to the 3<sup>rd</sup> respondent the petition filed by the petitioner is not maintainable on the ground that the petitioner is not in compliance with Section 399 of the Companies Act, 1956 read with Section 244 of the amended Companies Act, 2013:

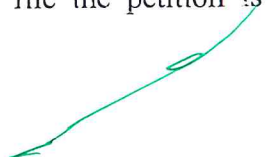
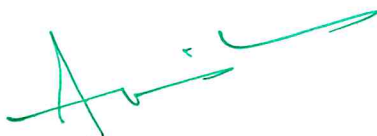
It is submitted by the 3<sup>rd</sup> respondent that the petitioner in the company petition is a shareholder in the 1<sup>st</sup> respondent-Company. The petitioner has filed the company petition

alleging oppression and mismanagement u/s 397, 398, 402, 403, 406 and 409 of the Companies Act, 1956 and other provisions of the Companies Act, 2013 arraying the Company as the 1<sup>st</sup> respondent, the majority shareholders as respondents-2 to 5, the petitioner's brothers as respondents 6 and 7. The relief sought for by the petitioner in the petition is with regard to the allotment of shares of the company in favour of respondents-3 and 4 and their continued holding thereof as invalid and illegal and all enabling resolutions including those dated 02.12.2011 and 01.02.2012 relating to allotment of such shares and appointment of Directors as invalid and illegal.

The 3<sup>rd</sup> respondent further submits that the petitioner had earlier filed C.P.No.59 of 2014 for the very same reliefs and withdrew the same on personal grounds. The petitioner's brothers respondents-6 and 7 herein were the petitioners-1 and 2 in that petition. Though the petitioner has contested the very allotment of the shares to the respondents-3 and 4 herein, in the earlier petition her grievance was only with regard to the premium payable by respondents-3 and 4 on the shares allotted to them. According to the 3<sup>rd</sup> respondent, since the petitioner has taken a contradictory stand, she is now estopped from disputing in the petition herein the allotment of shares made to the respondents-3 and 4.

Further according to the 3<sup>rd</sup> respondent, the eligibility criteria for a member to file an application under Section 399 of the Companies Act 1956 to be read with Section 244 of the amended Companies Act, 2013, is that a shareholder should hold a minimum of 10% of the total paid up equity share capital of the company. In this case, since the petitioner held only 24000 equity shares constituting 8.64% of the total paid up share capital on the date of filing of the petition and thus she is not eligible to file the petition herein. Though the petitioner has further contended that she held 24% shares prior to the allotment of shares to the 3<sup>rd</sup> and 4<sup>th</sup> respondents and since she is challenging the allotment made to the respondents she should be considered to be holding 24% of the shares and thus eligible to file the petition is

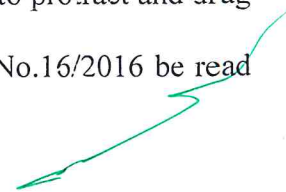





misconceived as Sections 397 and 398 stipulate that the member should hold 10% of the shares on the date of filing the petition. Since the petitioner held only 8.64% of the shares on the date of filing this petition, the petitioner is not permitted under law to file this petition. Further according to the 3<sup>rd</sup> respondent the petitioner in collusion with her two brothers who are respondents-6 and 7 herein by illegally transferring 3760 equity shares corresponding to 1.36% of the total equity shares so as to increase her shareholding from 8.64% to 10% to claim her eligibility to file this company petition. Therefore he prays that the company petition be dismissed as the petition is filed by the petitioner without the requisite number of equity shares as stipulated under Sections 397 and 398.

In response to the averments made by the 3<sup>rd</sup> respondent in the application, the petitioner has filed her objections denying every allegation made against her. It is the case of the petitioner that the above application is filed with an intention to protract and drag the proceedings in this case. It is admitted that on 30.03.2017, both the petitioner and the respondents had agreed to advance the arguments on main petition and the same has been recorded in the order sheet of the Tribunal. Subsequently, the respondents had filed six applications one after another with an intention of scuttling the main petition from being taken up for hearing.

It is the case of the petitioner that this application seeking dismissal of the main petition cannot be filed when the case is set for final hearing. It is further submitted that the 3<sup>rd</sup> respondent had filed another application CA No.16/2016 seeking for dismissal of the company petition and the same grounds were raised in that application. Since it was submitted that the issues raised in the application pertain to the main case, the same may be taken up along with the main petition and both the parties agreed to the same on 10.03.2017. Surprisingly the applicant has again come up with the present application to protract and drag the proceedings. The petitioner submits that the objections filed to CA No.16/2016 be read

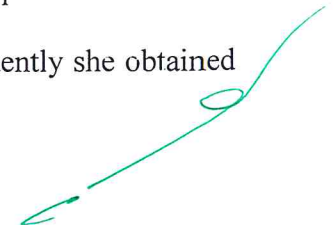
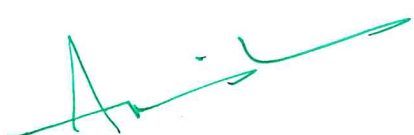


as part and parcel of this application also. It is also submitted that the main petition and the rejoinder filed by the petitioner herein may be read as part and parcel of this objection statement.

The petitioner further averred that the 3<sup>rd</sup> respondent along with the 4<sup>th</sup> respondent filed an application CA No.16/2016 under Rule 11 of the National Company Law Tribunal Rules, 2016 and subsequently now has filed this application separately in his individual capacity under Section 424 of the Companies Act, 2013 seeking for the same relief of dismissal. It is further submitted that the question of locus standi does not arise since Section 244 of the Companies Act, 2013 clearly provides that one-tenth of the members would have a locus standi to file this petition and one-tenth in this case would be half and as such the petitioner herein has the locus standi to file the present petition.

It is the further case of the petitioner that though the 3<sup>rd</sup> respondent disputes the shareholding of the petitioner and states that transfer of shares to the petitioner is not valid, since the petitioner holds more than 1/10<sup>th</sup> of the shareholding, she has the locus standi to file the company petition. Admittedly the company has only five shareholders. As per Section 244 of the Companies Act, 2013, 1/10<sup>th</sup> of the total number of its members would be eligible to file the petition. Therefore she contends that this application is filed by respondents-3 and 4 with a mischievous intent.

The respondents-6 and 7 have also filed their objections denying the claim made by the 3<sup>rd</sup> respondent. It is the case of the respondents-6 and 7 that the respondents cannot maintain this application as they have earlier filed another application on the same grounds. They submit that the petitioner had no information about the filing of CP No.59/2014 and the allotment of shares to respondents-3 and 4 and it is only after the respondents-6 and 7 informed the petitioner she came to know of the same. However, subsequently she obtained



independent advice from her advisor and as advised she initiated separate proceedings to protect her interest. The respondents-6 and 7 also submit that though petitioner is their sister, she is a home maker and she was not in a position to go Chennai for discussion for filing the company petition No.59/2014 and therefore, she was not fully aware of filing of the said company petition. Later when she came to know she withdrew herself and preferred a separate company petition to protect her interest and at that time respondents-3 and 4 did not raise any objections. It is their further case that since the petitioner and respondents-6 and 7 are related, it would not be proper to allege that there has been collusion between them.

It is the further case of respondents-6 and 7 that counsel appearing for the parties herein had mutually agreed on 10.03.2017 that the main petition itself be taken up for hearing. Therefore, this application is frivolous and filed with an intent to delay the hearing on the main petition and therefore, may be dismissed.

We have heard the learned counsel appearing for the parties and perused the records.

Section 399(1)(a) of the Companies Act, 1956 reads thus:

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“399. Right to apply under section 397 and 398.

(1) The following members of a company shall have the right to apply under section 397 and 398:-


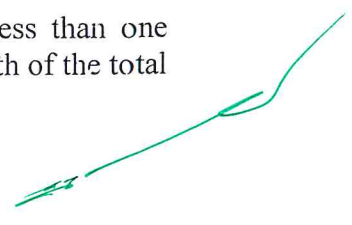
(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;”

Section 244 of the Companies Act, 2013 reads as hereunder:

**“Right to apply under section 241.**

244(1) The following members of a company shall have the right to apply under section 241, namely:-

(b) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total



number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;"

As can be seen from the averments in the petition, the petitioner is only a shareholder and not a Director of the company. The shareholding pattern in the company as on 22.03.2005 is as follows:

Sl.No.	Shareholders	No. of shares	% of paid up capital
1	Dasaratha Rami Reddy	3000	30%
2	Pratap Reddy	3000	30%
3	Kiran Kumar Reddy	3000	30%
4	Nandana Reddy	1000	10%
	Total	10000	100%

Subsequently on 02.12.2011, respondents-3 and 4 acquired 64% of the shares in the company and therefore, the shareholding pattern stood revised as follows:

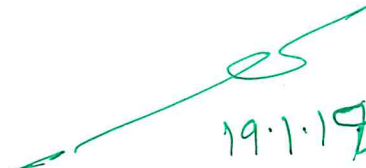
Sl.No.	Shareholders	No. of shares	% of paid up capital
1	Pratap Reddy	38000	13.68%
2	Kiran Kumar Reddy	38000	13.68%
3	Nandana Reddy	24000	8.64%
4	Yatin Reddy	88900	32%
5	Jhansi Reddy	88900	32%
	Total	277800	100%

From the above, it is clear that the shareholding percentage has been changed and not the equity held by the existing shareholders on account of allotment of shares to respondents-3 and 4 and further the total number of members has increased to five. However as per Section 399(1)(a) of the Companies Act, 1956 and Section 244 of the Companies Act, 2013 any member or members holding not less than one-tenth of its membership can apply under Sections 397 and 398 of the Companies Act, 1956 and under Section 244 of the Companies Act, 2013. Therefore, the petitioner Smt. Nandana Reddy has every right to maintain the petition filed by her under Sections 397 and 398 of the Companies Act, 1956 and hence this application is liable to be

dismissed as devoid of merits. Hence dismissed. It is further observed that the respondents-3 and 4 have raised the question of delay in filing the CP NO.9/2016. There is no such averment regarding delay in the application filed praying for dismissal of the petition. Hence the question of delay will be considered at the time of hearing the main petition.



**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**



**RATAKONDA MURALI)**  
**MEMBER, JUDICIAL**

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