

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P. No.119/ 2016 IN CA/1/186/CB/2016

UNDER SECTION 237 OF CA/1956

IN THE MATTER OF PEERLESS ENGINEERING PRODUCTS PRIVATE LIMITED

Coram: Hon'ble Shri.Ratakonda Murali, Member Judicial.

Hon'ble Dr. Ashok Kumar Mishra, Member Technical

Order delivered on 29th August, 2017.

For the Petitioner: Shri S. Hari, Advocate.

For the Respondent Shri K.V. Satish Advocate

BETWEEN:

Dr. Sabhapathi Dorai Raju,
S/o Sabapathi Mudaliar,
Aged about 70 years and
R/at No.26, 12th Main, III Block I
Jayanagar, Bangalore – 560 011..

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PETITIONER

AND

1. Peerless Engineering Products Private Limited,
No.26, 12th Main, III Block, Jayanagar,
Bangalore – 560 011,

2. Sri Haridas Pottath,
S/o Kumar Pottath,
Aged 55 years and R/at "Sri Hari",
No.56, 7th Main, Shankrnagar,
Bangalore – 560 096

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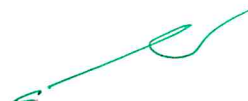
RESPONDENTS

Heard on : Heard on : 04.08.16, 30.08.16, 20.09.16, 21.10.16, 22.11.16, 15.12.16,
24.01.16, 13.02.17, 07.03.17, 07.04.17, 16.06.17, 28.06.17, 26.07.17 and 22.08.17.

Per Hon'ble Shri Ratakonda Murali, Member (J):

ORDER

This petition was originally filed before the Company Law Board, Chennai, under Section 186 of the Companies Act, 1956, and numbered as Company Application No.CA/1/186/CB/2016 praying for a direction for convening the Extraordinary General Body

Meeting to have a quorum as one person personally present in the meeting. Consequent upon establishment of National Company Law Tribunal and abolition of the Company Law Board, this application was transferred to this Tribunal and renumbered as TP No.119/2016.

The facts of the case in brief are as under:

The 1st respondent company was incorporated on 12.02.1982 in the Office of the Registrar of Companies in Karnataka at Bangalore with Registration No.08.04639. The petitioner and five others were the promoter Directors of the 1st Respondent Company. The authorized share capital of the Company was Rs.1,00,000 divided into 1000 equity shares of Rs.100/- each. The main objects of the company is to manufacture, import, export, purchase and sell LPG stoves and other appliances in all kinds of varieties and forms. As per the Articles and Memorandum of Association of the Company, the petitioner is the subscriber to the 1st Respondent Company with 99% equity shares and also its Managing Director.

The petitioner avers that the KSSIDC has allotted an industrial land with shed to the 1st respondent company measuring about 50 ft by 60 ft with a portion of the land by a shed. The 1st Respondent Company wanted to manufacture gas stoves in the said premises. For this, the 1st Respondent Company purchased the necessary machinery of lathe, hydraulic drilling heavy duty drillers and other machinery for use in the fabrication industry.

The Respondent No.2 was doing some odd jobs of the 1st respondent company. In 1992, on finding the work of Respondent No.2, the petitioner inducted the Respondent No.2 as a Director in the 1st Respondent Company to meet the requirements of the minimum number of two shareholders required under the Act by allotting 10 equity shares, i.e., 1% of the equity shares to the Respondent No.2 in order to meet the mandatory requirement of two Directors.

In the guise of helping the applicant the 2nd Respondent started manufacture of paper cups in the premises of the 1st Respondent Company by pushing aside all the machinery of

the 1st Respondent Company to a corner which the petitioner had purchased for manufacture of gas stoves and instead the Respondent No.2 brought in machinery for manufacture of paper cups. Apart from the above, the Respondent No.2, without any authority started using the open land in the 1st Respondent Company premises for storage of tanks for storing acid and for doing electroplating business. Taking advantage of old age of the petitioner and other issues, the Respondent No.2 had also started electroplating industry in the said premises of 1st Respondent Company without any authority for which the petitioner as Managing Director of 1st Respondent Company received a notice from the Karnataka Pollution Control Board for violation of the provisions of Water (Prevention and Control of Pollution) 1974 and Air (Prevention and Control of Pollution) Act, 1981. The Respondent No.2 has also tried to grab the whole land and building of the 1st Respondent Company held by the petitioner who is 99% shareholder of the Company.

To achieve this objective, the Respondent No.2 has built up a false and fictitious case against the petitioner stating that he has incurred expenditure to the tune of Rs.43,09,879/- towards deposit for electricity connection etc., in the 1st respondent company premises. This is done by the Respondent No.2 only for running his own business of paper cup manufacture and electroplating industry without any authority and he is now demanding transferring the same expenditure into the accounts of the 1st respondent company. This way, the Respondent No.2, taking advantage of the old age and poor vision of the petitioner has, with the help of his advisers has filed a series of cases in order to grab 99% of the shareholding of the 1st respondent company.

The petitioner has averred that the Respondent No.2 has questioned the transfer of 450 shares by the petitioner in favour of his wife without his consent. The petitioner would submit that the transfer of shares in favour of his wife is as per Article 7 of the Articles of Association of the Company.

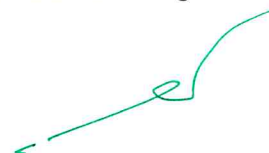


The Petitioner states that the Respondent No.2 is alleging that he has not attended the Board meetings. The signatures in the Attendance Register are denied as forged. The petitioner states that the 1st Respondent Company has no say in the transfer of shares. In fact, the Directors have no inherent power to refuse to register the transfer of shares. In this connection the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court of India in the case of Bajaj Auto Limited V. N.K. Firodia (1971) 41 Com cases 1: AIR 1971 SC 321.

The petitioner submits that the Respondent No.2 has alleged that he has not attended the Board meetings. The signatures in the Attendance Register are denied by him. Therefore, the petitioner would submit that calling for an Extraordinary General meeting to delete Article 19 of the Articles of Association has become necessary. Hence, the petitioner submits that due to non-cooperation of Respondent No.2 who is the only other shareholder, there will not be a quorum for the meeting. Even for normal functioning of the company there is a deadlock in holding the shareholders or Board meetings.

Hence, the petitioner prays this Tribunal to accord permission to hold an EGM with one shareholder present as a quorum which is possible only by an order of the Tribunal in exercise of its power under Section 186 of the Companies Act, 1956.

On the other hand, the Respondent No.2 has filed a detailed statement of objections. In the objection statement, the Respondent No.2 has stated that the petition itself is not maintainable either under law or on facts and hence the same liable to be dismissed in limine. He is alleging that the petitioner is making misleading statements and this application is nothing but an abuse of process of law. The application is devoid of merits and is made with a mala fide intention just to harass Respondent No.2 and perpetrate fraud against him. The petition is not maintainable and is liable to be rejected in as much as the Respondent No.2 has filed civil suit OS NO.1154/2014 seeking an order and decree declaring that the



Respondent No.2 is entitled to be transferred with 95% of the issued equity shares of the 1st Respondent Company along with other reliefs.

The Respondent No.2 has further stated that he has also initiated proceedings under Section 237 of the CA, 1956 by filing CP 01/2014 before the erstwhile Company Law Board, Chennai which is transferred to this Tribunal and renumbered as TP No.118/2016. The respondent has taken the same grounds in his objections in this petition as he has taken as a petitioner in TP No.118/2017.

We have heard the learned counsel on both sides and perused the records. We have dealt with in great detail all the grounds taken by both the petitioner and the Respondent No.2 in TP No.118/2016.

Now, in short, the petitioner is seeking permission from this Tribunal under Section for convening of the EGM under Section 186 of the Companies Act, 1956. In order to appreciate the case on hand, we reproduce Section 186 of Companies Act, 1956, which is as under:

"186. (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Company Law Board may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting:-

- (a) order a meeting of the company to be called, held and conducted in such a manner as the Company Law Board thinks fit; and
- (b) Give such ancillary or consequential directions as the Company Law Board thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the company's articles."

Now, that the petitioner has transferred his 450 equity shares of the 1st Respondent Company in favour of his wife and the same has been recorded in register of the ROC, who has become 45% shareholder of the 1st Respondent Company, she has all the rights to participate in the EGM which would form the quorum for passing any resolution. Invoking




Section 186 of the Companies Act, 1956, by this Tribunal is not necessary as the 1st Respondent Company has the requisite number of members to form the quorum, the petitioner is entitled to hold the EGM in accordance with the provisions of the Companies Act, 2013 and pass all resolutions which are necessary for smooth functioning of the Company.

Therefore, this Tribunal is of the view that there is no need for any order from the Tribunal for conducting the EGM by the petitioner along with his wife as they can convene EGM pass any resolution and to pass orders as deemed fit within the provisions of Companies Act, 2013 and their Articles and Memorandum of Association. Hence, TP 119/2016 is dismissed giving liberty to the petitioner to proceed with the conduct of the EGM without any order from this Tribunal.

No order as to costs.



(ASHOK KUMAR MISHRA)
MEMBER (TECHNICAL)



(RATAKONDA MURALI)
MEMBER (JUDICIAL)

psp.