

**NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 05/04/2017 AT 10.30 AM**

**PRESENT: SHRI K. ANANTHA PADMANABHA SWAMY, MEMBER-JUDICIAL
SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL**

APPLICATION NUMBER :

PETITION NUMBER : TCP/31/2016

NAME OF THE PETITIONER(S) : P.K.Sudheer and 5 others

NAME OF THE RESPONDENT(S) : Sreekrishnapuram Hospitals Private Ltd and 11 others

UNDER SECTION : 111, 397, 398, 402, 403, 406 & 237 r/w Sch XI

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	
1	S. NARASEEMAN for SOY JOSEPH	FOR R4 AND R6	S. Narasimhan
2	ROHAN RAJASEKARAN for. Rajagopal & Rajuvalan Advocates	Counsel for R1-3	Rohit R
3	PREETHI S. ARASU	Counsel for Proposed Respondent 13	Preethi S. Arasu

ORDER

Counsel for Petitioner present. Counsel for Respondents No-1, R2, R3 and R13 present. Counsel for R4 and R6 present. Counsel for petitioner has filed an application which has been numbered as C.A.1/2017 for impleading Ms. Athulya Arun as Respondent No.13. The proposed respondent is stated to have changed her name and now known as Ms. Athulya Damu with address changed as has been mentioned in the counter filed on behalf of her.

2. We have heard both of the counsels and perused the records. It reveals that the petitioner has got the knowledge of transfer of entire shareholding of R11 in favour of R13 when the counter was filed during 2009. The Annual Returns that has been filed on 16.02.2009 with the ROC also reflects the transfer of entire shareholding of R11 to the proposed R13, as the name of the proposed R13 is reflected at Page 24 of the same. In the C.P. No.1/2009, the petitioner made a prayer under Para 8.5 for setting aside the ~~illegal~~ ^{the} transfer of 19,250 shares illegally transferred in favour of R11. In case the petitioner would be in a position to establish his case, then any appropriate order may be passed against R11, which will affect the rights of the proposed respondent, Therefore, it is necessary to implead the proposed R13, who has acquired the entire shareholding of R11 which is under challenge in the CP and the said transfer is admitted under Para G of the counter filed on 16.02.2009 by the Respondent. Counsel for respondents has raised two objections. The first one is that the application has been filed after a lapse of eight years from the date when the petitioner came to know about the transfer of entire shareholding of R11 to the proposed R13. The second objection is with regard to the hardship which is likely to be faced by the proposed Respondent-13 in representing her case, as she got married and settled outside the country. Our attention is drawn to Section 405 wherein it is provided that if the Tribunal is satisfied ^{that} ~~and~~ there is sufficient cause for adding a party as Respondent, the party can be impleaded as Respondent in any application under Section 397 and 398.

3. This petition came to be filed under the provisions of Sections 397 and 398 of the Companies Act, 1956 during the year 2009. It is an admitted fact that the application was filed after the lapse of eight years. However, the proposed Respondent is a necessary and proper party to be impleaded as the entire shareholding of R11 has been purchased by the proposed R13. In case the

proposed Respondent is not arrayed as party, her rights may get affected if any order is passed in the C.P. The hardship which has been indicated by her counsel is not considered to be sufficient ground to reject the application of the petitioner.

4. Keeping in view the totality of the circumstances and considering the need to implead the proposed Respondent 13 as a necessary and proper party in the matter, we condone the delay on the oral prayer of the counsel for the applicant and allow the application of the petitioner. Counsel for petitioner is directed to amend the petition accordingly and file the same before the next date of hearing by providing a copy to the other side. Accordingly, the CA 1/2017 is disposed of. Put up on **5.6.2017 at 10.30 A.M.**


(Ch. Md. Sharief Tariq)
Member (Judicial)


(K. Anantha Padmanabha Swamy)
Member (Judicial)