
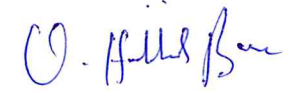


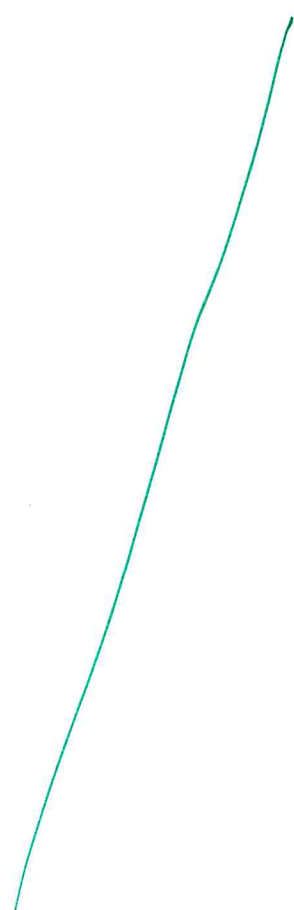
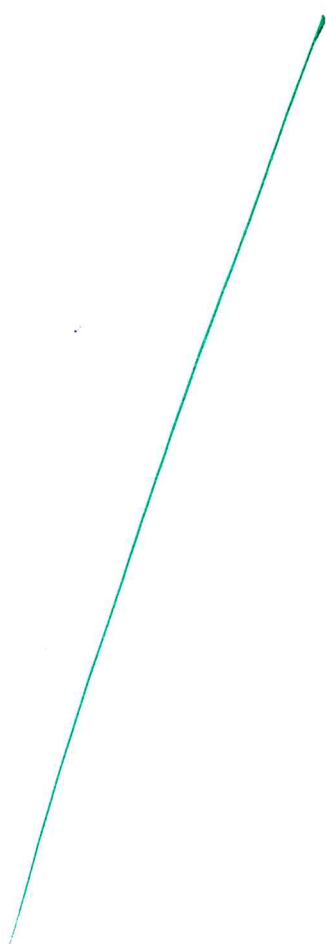
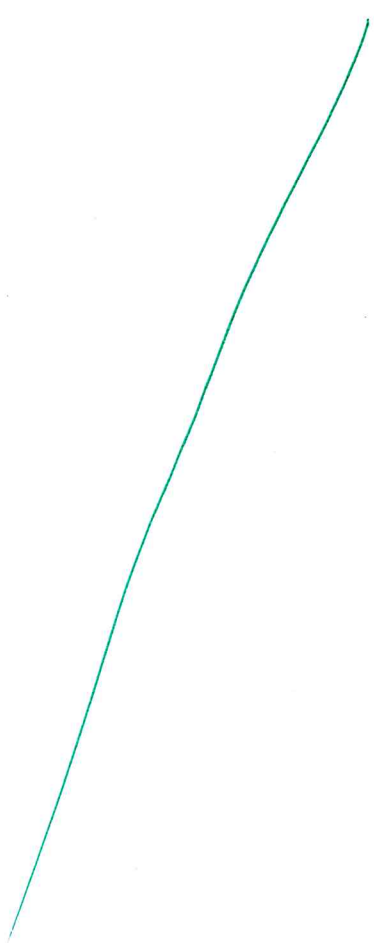
NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 07/06/2017 AT 10.30 AM

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

APPLICATION NUMBER :
PETITION NUMBER : TCP/226/2016
NAME OF THE PETITIONER(S) : Mohan Paul
NAME OF THE RESPONDENT(S) : M/s City Hospital Private Limited & 5 others
UNDER SECTION : 111

| Sl.No. | NAME (IN CAPITAL) | DESIGNATION | SIGNATURE |
|--------|-------------------|-------------------------|---|
| | | REPRESENTATION BY WHOM | |
| 1) | T.K. SHAJAHAN | COUNSEL FOR PETITIONER |  |
| 2) | K. MANOJ MENON | COUNSEL FOR RESPONDENTS |  V. HALLEL BEN FOR K. MANOJ MENON |



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION
BENCH, CHENNAI.**

Arguments heard on 07.06.2017

Orders passed on 07.06.2017

T.C.P.No.226 of 2016
(C.P.No. 2 of 2015)
(Under Section 111A of the Companies Act, 1956)

Mohan Paul
Vs

M/s.City Hospital Private Ltd. & 5 others

CORAM

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL) :- (ORAL)

1. Under consideration is the company petition that came to be filed before the erstwhile CLB, numbered as C.P.No.2 of 2015 which stood transferred to NCLT and renumbered as T.C.P.No.226 of 2016. The petition has been filed under Section 111A of the Companies Act, 1956 (now Section 59 of the Companies Act, 2013). The grounds set out for seeking reliefs have been given in details in the petition. Based on the grounds, the reliefs sought for, are as follows :-

- i. *Pass an order directed^{ing} the 1st respondent company to effect the transmission of 45 numbers of equity shares in the name of the petitioner covered under Share Certificate Nos: 101 and 104 by recording the same in the share register of the company in the name of the petitioner.*

- ii. *Pass an order directing the 1st respondent company and its Board to rectify the share register incorporating the above transfer of shares in the name of the petitioner.*
- iii. *The costs of this CP and the incidental expenses incurred thereto by the petitioner may be directed to be paid by the contesting respondents.*

2. The counsel for respondent has filed counter in the main petition. The main objection raised by the Respondent company is that since attachment of shares is ordered by the court, under law, the Respondent cannot accede to the request of the petitioner for transmission of shares. The other objections are pertaining to non-production of the original share certificates, Power of Attorney and that the request for transmission of shares has been made only through the counsel and not by the claimant himself, etc. Counsel for petitioner has produced a copy of the order that came to be passed by the Special Judge, SPE/CBI-II, Ernakulam dated 9th May 2017 in CrI.MP No.289 of 2017 in C.C.No.06 of 2002, wherein the order of attachment passed by the court on the shares held by Dr.T.M.Paul has been lifted. Now, after the order passed by the CBI court, there appears to be no hurdle for the respondent company to accede to the request of the petitioner.

3. However, the counsel for respondent has submitted one judgement of the Hon'ble High Court of Kerala passed in CrI.Rev.Pet.No.1015 of 2004(B) titled *Moideen Vs Sub-Inspector of Police* that came to be passed on 13.08.2010 wherein it has been observed that the trial court has no powers to lift the attachment order unless certain conditions are met with. Based on this, the

counsel for respondent has submitted that the order passed by the CBI court dated 9.5.2017 is wrong. The arguments of the counsel for respondent are not tenable in the eye of law because the trial court itself has passed an order for lifting of the attachment relating to the shares held by Dr.T.M.Paul. The same judgement is based on the ruling of Hon'ble High Court of Kerala given in *Kumaran V. Muriyad Service Co-operative Bank, Thrissur and Another* reported in 2010 (2) KLT 97. Therefore, the counsel for respondent cannot question the order passed by the CBI Court on 09.05.2017 and this forum has no jurisdiction to make any observation on the order passed by the CBI Court. In case, the respondent is aggrieved by the order dated 9.5.2017 passed by the CBI court, Ernakulam, he is at liberty to file criminal revision petition before the Hon'ble High Court of Kerala against the order dated 9.5.2017. However, the counsel has apparently tried to impress upon this Bench forcefully that based on the judgement of Kerala High Court given in *Mohan Paul Vs Central Bureau of Investigation, Cochin*, this Bench cannot pass an order on the petition for transmission of shares.

4. It is on record that the petitioner had presented a copy of the death certificate of Dr.T.M.Paul along with order document for transmission of shares in the name of the Petitioner before the Respondent company through the counsel on 13.10.2014 as mentioned in the Company Petition. It is settled law that with the death of the accused person, the attachment if any ordered u/s 83 of the Cr.PC would not survive as has been held by the Apex Court in *M/s.V.G.Peterson*

v.O.V.Forbes and Another reported in AIR 1963 SC 692, wherein it has clearly been held that the attachment could subsist so long as the contemnor was alive and that on the death of the contemnor, the attachment could not survive either in law or in equity or the rightful owner of the property would be entitled to restoration of the property on the death of the contemnor. There is no reason why the said principle cannot apply in the case of the death of an absconding accused whose property was under an order of attachment under section 83 of CrPC on the date of the death of such absconding accused. The law laid down by the Hon'ble Supreme Court in the said case is the law of the land under Article 141 of the Constitution of India. The plea that has been taken by the respondent company was wrong and contrary to law laid down by the Apex court. It appears that the respondent company has deliberately not transmitted the shares of the petitioner in spite of the request made through his counsel. The application for transmission of the shares was made on 13.10.2014, but the matter was kept pending for more than two and a half years without a valid reason/cause by Respondent Company. Therefore, we reject all the objections of the Respondent Company.

5. In the light of the above, we allow the Company Petition and direct Respondent company to effect transmission of 45 numbers of equity shares in the name of the petitioner having shares certificate Nos.101 and 104 by recording the same in the share register of the company in the name of the petitioner and also direct the Respondent company and its

Board of Directors to rectify its share register incorporating the above transfer of shares in the name of the petitioner within ten days. The necessary documents ^{will be} filed by the Petitioner with the Respondent Company.

6. The petitioner is directed to file the original share certificates along with the deed of Power of Attorney, an indemnity bond and the order of lifting of attachment of the shares passed by the CBI special court on 09.05.2017. The petitioner shall also file an application with supporting documents to the Respondent company within ten days from the date of uploading of this order on NCLT website. Thereafter, the 1st Respondent company will make the compliance within the above mentioned ten days.

7. In the circumstances, we impose cost on the respondent company to the tune of Rs.50,000/- (Rupees Fifty Thousand only) as damages under section 58(5)(b) of the Companies Act, 2013, for making delay and compelling the petitioner to knock at the door of the court seeking directions for transmission of shares and entering the name of the petitioner in the register of members of the company. The cost of Rs.50,000/- shall be paid by the respondent company to the petitioner within three weeks of the date, this order is uploaded on NCLT website. Order pronounced in the open court.


(K. ANANTHA PADMANABHA SWAMY)
(MEMBER (JUDICIAL))


(CH. MOHD. SHARIEF TARIQ)
(MEMBER (JUDICIAL))

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