

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP No.86 of 2016
(C.P.No.17 of 2012)

Under Sections 397, 398, 402, 403 and 406 read with
Schedule 11 of the Companies Act, 1956

In the matter of

A.Parthasarathy

Vs

M/s. MPL Forging Pvt. Ltd. & 6 Ors.

Order delivered on 28.08.2017

CORAM :

K.Anantha Padmanabha Swamy, Member (Judicial)
Ch. Mohd. Sharief Tariq, Member (Judicial)

For petitioner(s) : Ms. M. Vidya, Advocate
For respondents 1to 3 & R7 : Mr. Balakumar, Advocate
For Respondent No.5 : Mr. B. Manoharan, Advocate

ORDER

Per: Ch. Mohd. Sharief Tariq, Member (Judicial)

1. The Petition under adjudication has been filed during the year 2012 before the Company Law Board and numbered as CP No.17 of 2012. After constitution of NCLT, the same has been transferred to this Bench and renumbered as TCP No. 86 of 2016. The Petitioner arrayed seven Respondents in the Petition. Respondent No. 5 is M/s. Small Industries Development Corporation (SIDCO),

Respondent No.6 is Indian Bank and Respondent No.7 is a firm viz., M/s. Excel Auto Components wherein R2 and R3 are partners. The Petition has been filed under Sections 397, 398, 402, 403 and 406 r/w Schedule 11 of the Companies Act, 1956. The main grievances of the Petitioner are that the land allotted by SIDCO in the name of Respondent No.7 viz., M/s. Excel Auto Components has been agreed to be contributed as share capital on behalf of the Respondents 2 and 3 as consideration for allotment of 2500 shares of Rs.10 each to them in the 1st Respondent company. The 1st Respondent company was incorporated on 09.03.2007 as a private limited company. The authorised capital is Rs.15,00,000/- having 1,50,000 equity shares of Rs.10/- each. The second claim of the Petitioner is that he has paid to 1st Respondent company a total sum of Rs.38,81,000/- up to 31.03.2010 in order to keep the factory (1st Respondent company) running even at times of distress on the assurance of Respondent Nos.2 and 3. The Petitioner further states in the Petition that Respondents 2 and 3 had unilaterally and surreptitiously without the consent of the Petitioner assumed upon themselves the cheque-signing power and started dealing with the bank accounts of the company, but failed to


convene any board meeting, annual general meeting, place and finalise the accounts of the company in accordance with law, thereby caused loss to the company. Therefore, the loss caused to the 1st Respondent company by Respondent Nos.2 and 3 be assessed and they be directed to make good the loss to 1st Respondent company. In view of this the Petitioner sought the reliefs as follows :-

- a) direct the Respondents 2, 3, 5 and 7 to formally transfer the land at AC-30/5, SIDCO Industrial Estate, Thirumudivakkam, Chennai-600044 in the name of the 1st Respondent company;
- b) direct the Respondents 2 to 4 to hand over the management of the company to the petitioner;
- c) direct the Respondents 1 to 4 to jointly and severally repay the petitioner the sum of Rs.38,81,000/- together with interest thereon at 24% p.a. till the date of repayment in full;
- d) to assess the damages caused to the 1st Respondent company and direct the 2nd and 3rd respondents to pay the damages to the 1st Respondent company. *per*

It may be noted that at the time of arguments, relief (b) has not been pressed by the Petitioner for the reason that Respondent No.4, with the support of the Petitioner, has taken over the management of the 1st Respondent company.

2. The counter has been filed by Respondent Nos. 2, 3, 4 and 7. The gist of the reply is that the claim and contentions made by the Petitioner have been denied by the Respondents stating therein that there was never any agreement, oral or written, to transfer the land allotted to R7 as part of the contribution of share capital by Respondent No.2 and Respondent No.3 to the 1st Respondent company and stated that it was explicitly agreed in writing that Respondent No.1 company should get lease hold rights from Respondent No.7 (a firm) of which R2 and R3 are partners. The Respondents 2 and 3 denied that they have not invested any money into the company, more so towards the share capital agreed to be taken by them at the time of incorporation of the company as stated in para 4 of the Petition. However, under para 2.4 of the counter, it has been mentioned by the Respondents that the capital contribution were either paid by the respective persons of the

company or adjusted against the incurrence of pre-corporation/preliminary expenses incurred by them for and on behalf of the company. It has also been placed on record by the Respondents in the counter that looking to the books, the monies presumed to have been brought in by the Petitioner were done so through cash means. Whereas taxation laws stipulate that any money received by any person/company had to be received through banking channels. There are no entries in the books of the company stating the monies claimed to have been brought in by the Petitioner. It has further been averred by the Respondents in the counter that the 1st Respondent company was given possession of the land on 20.03.2007 that stands allotted in favour of the Respondent No.7 by Respondent No.5 i.e. SIDCO, the monthly rent and the rental advance was to be retained by the 1st Respondent company as contribution of Respondent Nos.2 and 3 towards the plant and machinery that were proposed to be purchased for the 1st Respondent company.


3. The Petitioner and Respondent Nos.2, 3 and 7 filed written arguments which are in support of their respective stands taken in the pleadings. Under para 1.16 of the 

written arguments submitted by the Respondents 1, 2, 3 and 7, it has been stated that there really existed no agreement for transfer of land to the 1st Respondent company as part of share capital contribution on behalf of the Respondent Nos.2 and 3. However, it has been stated that *'the Petitioner was in control of the 1st Respondent company for a quite long time and during those periods he never made efforts to transfer in the land allotted to Respondent No.7 by Respondent No.5 to the account of the company for the purpose of which all that required was merely writing a letter to Respondent No.5 (SIDCO) for changing the ownership from Respondent No.7 to 1st Respondent company. But the Petitioner has never done so'*. In other words the Respondents would have no objection, if the Petitioner could have taken the steps to get the land in question transferred in favour of 1st Respondent company by writing a letter to R5 (SIDCO), for changing the ownership from Respondent No.7 to 1st Respondent company.

4. Further, under para 3.2, it has been admitted by the Respondents 2 to 4 that they never raised any issue trusting the Petitioner and Respondent No.2 have signed

the financial statement presented by the petitioner without going through the contents therein and this was a grave mistake done by the Respondents. In other words, the outstanding amount contributed by the Petitioner and pending as share application money to the tune of Rs.38,81,000/- has been admitted by the Respondent Nos.2 to 4. The admission on the part of Respondent Nos.2 to 4 is also evident from the balance sheets for the year 2009-10 and 2010-11 available at Page Nos.43 and 67 of the typed set filed by the Petitioner wherein Respondent No.2 is shown to have digitally signed in the said balance sheets. The balance sheet as on 31.03.2010 shows Rs.34,30,000/- and balance sheet as on 31.03.2011 shows Rs.41,90,500/- as pending share application money, contributed by the Petitioner to the 1st Respondent company.

5. The rejoinder has been filed by the Petitioner confirming the pendency of the share application money as reflected in the balance sheets mentioned above.


6. It is necessary to mention here that, strictly speaking, there may have not the involvement of acts or omissions 

amounting to oppression and mismanagement in this case, but this Tribunal is not powerless to do substantial justice between the parties as has been laid down by the Hon'ble Apex Court in **Needle Industries (India) Ltd. Vs. Needle Industries Newey (India)**, reported in 1981 AIR, 1298. Based on this principle, we proceed to examine the case in order to do justice between the parties.

7. On perusal of the pleadings and written arguments filed by the Petitioner and Respondents, it appears that there has been some understanding between the shareholders i.e. the Petitioner and Respondent Nos.2 and 3 to transfer the industrial plot allotted to Respondent No.7 to the 1st Respondent company as consideration for the shares allotted to Respondent Nos.2 and 3 in the 1st Respondent company. This position has in fact been indirectly admitted by Respondent Nos.2 and 3 in their written arguments under para 1.6 wherein it has been stated that *'the petitioner was required to write a letter to Respondent No.5 (SIDCO) for changing the ownership of the industrial plot from Respondent No.7 to the 1st Respondent company'*. In this regard, Respondent No.5 (SIDCO), during the course of arguments, agreed to transfer the industrial

plot from Respondent No.7 to the 1st Respondent if the Petitioner and Respondent No.7, through Respondent Nos. 2 and 3, approach them. Moreover, it will be in the interest of the 1st Respondent company if the industrial plot is transferred from Respondent No.7 to the 1st Respondent company as per the understanding between the Petitioner and Respondent Nos.2 and 3.

8. Therefore, in the circumstances, we direct the Petitioner, Respondent Nos.2, 3, 4 and Respondent No.7 to take steps for transfer of the industrial plot in favour of the 1st Respondent company by making proper application to Respondent No.5, SIDCO, who is directed to allot the land (industrial plot) to the 1st Respondent company, as a consideration for the shares allotted in favour of R2 and R3 in the 1st Respondent company.

9. The share application money contributed by the Petitioner is pending allotment, the Board of Directors of 1st Respondent company may take appropriate decision either to allot the shares to the Petitioner or to return the share application money to the Petitioner along with interest due. The issue pertaining to the compensation/damages with 

regard to the period during which Respondent Nos.2 and 3 have been running the management of the company is not worth of consideration. Because, there is no positive evidence to show that Respondent Nos.2 and 3, while being in the management of the 1st Respondent company did siphoned off the money. Therefore, this prayer is declined.

10. Accordingly, the Petition stands disposed of. The interim order, if any, stands vacated. There is no order as to costs. The file shall be consigned to record after due compliance.

K.ANANTHA PADMANABHA SWAMY,
MEMBER (JUDICIAL)

CH. MOHD SHARIEF TARIQ,
MEMBER (JUDICIAL)