

**In the National Company Law Tribunal
Single Bench, Chennai**

**TCP/110/2016
[CP/107/2012]**

Under Sections 111, 397, 398, 402 & 403 of the Companies Act, 1956

In the matter of

Mr. M. R. Sarangapani Reddy & Anr.

V/s

Merit Inn Southern Star Private Limited & 9 Ors.

Order delivered on: 27.09.2017

For the Petitioners: Mr. Thriyambak J Kannan, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. The matter under consideration is Company Petition filed by Mr. M. R. Sarangapani Reddy and Mrs. Shaalini Sarangapani (hereinafter collectively called as '**Petitioners**') under sections 111, 397, 398, 402 & 403 of the companies Act, 1956 alleging various acts of oppression and mis-management in the affairs of M/s. Merit Inn Southern Star Private Limited (hereinafter called as '**Respondent Company**'). The said petition was originally filed before the Company Law Board, Southern Region which stood transferred to this tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016 and renumbered as TCP/110/2016.

2. Before proceeding with the matter, it is necessary to mention herein that none of the Respondents have appeared before this Bench, therefore all the respondents were set *ex-parte* vide its orders dated 30.05.2017 and 06.01.2017.
3. The petitioners while alleging several acts of oppression and mismanagement have prayed for following reliefs against the Respondents:

- (a) Declare that the paid up capital of the Company is Rs. 6,10,00,000/- made up of 3,50,000 redeemable preference shares and 2,60,000 equity shares;***
- (b) Consequently declare that any allotment of equity shares of the Company to Respondent No.2 including the allotment of 90,000 equity shares as per Form 2 marked herein as Annexure 17, 2,87,000 equity shares as per Form 2 marked as Annexure 22 is void ab initio;***
- (c) Consequently further declare that the redemption of the redeemable preference shares of Petitioner No. 1 ex facie illegal and void ab initio;***
- (d) Consequently declare that Petitioner No.1 has always been the holder of 3,50,000 redeemable preference shares of the company and 2,57,700 equity shares of the Company;***
- (e) Further declare that Petitioner No.2 has always been the holder of 2,300 equity shares of the Company;***
- (f) Declare that Respondent No.2 has never been a shareholder of the Company from 12 January 2005;***

- (g) Declare that Form 20B, Form 23AC, Form 2 and Form 66 filed with the ROC for the year ending 31st March 2007 marked therein as Annexure 17 have been done without the authorization of the Company and are hence void ab initio;*
- (h) Declare that form 20B, Form 23AC, Form 2 and Form 66 filed with the ROC for the year ending 31st March 2008 marked therein as annexure 18 have been done without the authorization of the Company and are hence void ab initio;*
- (i) Declare that Form 20B, Form 23AC, Form 2 and Form 66 filed with the ROC for the year ending 31st March 2009 marked therein as Annexure 19 have been done without he authorization of the Company and are hence void ab initio;*
- (j) Declare that Form 20B, Form 23AC, Form 2 and Form 66 filed with the ROC for the year ending 31st March 2010 marked therein as Annexure 20 have been done without the authorization of the Company and are hence void ab initio;*
- (k) Declare that Form 20B, Form 23AC, Form 2 and Form 66 filed with the ROC for the year ending 31st March 2011 marked therein as Annexure 21 have been done without the authorization of the Company and are hence void ab initio;*
- (l) Declare that Form 20B, Form 23AC, Form 2 and Form 66 filed with the ROC for the year ending 31st March 2012 marked therein as Annexure 22 have been done without the authorization of the Company and are hence void ab initio;*
- (m) Declare that Respondents No 4 and 6 have never been appointed as the Statutory auditors of the Company;*

- (n) Declare that Respondent No.3 and 5 have never been appointed for the purpose of filing Form 66 and for and on behalf of the Company;*
- (o) Declare that the purported appointments of Respondent Nos. 7 to 9 as directors of the company is illegal and void ab initio;*
- (p) Surcharge Respondent 3 to 9 for any losses that they may have caused to the company in the execution of their illegal activities as set out in the petition hereinabove;*
- (q) Declare that any act done by the Respondent Nos.2 to 9 in relation to the property of the Company, as described herein above, is without authorization, ex facie illegal and void ab initio.*
- (r) Consequently declare that any contract, agreement, arrangement, memorandum or any other such understanding entered in relation to the property of the Company, as described herein above, by Respondent Nos. 2 to 9, their men, servants, agents or any person acting on their behalf, is ex facie illegal and void ab initio;*
- (s) Direct Respondent Nos. 2 to 9 to hand over any documents that they may possess which belongs to either the Petitioners or the Company, including the details of the forged digital signature of Petitioner No.1 that has been used to upload the various Forms, any other documents in hard copy, Printouts, materials on compact discs, pen drives, external hard drives and any other such storage devices;*

(t) And pass any other orders as may be deemed fit by this Hon'ble Board in the facts and circumstances of the case and thus render justice.

4. In brief, the averments of the petitioners are that the Company was incorporated in the year 2002 and the Petitioners 1 and 2 and the 2nd Respondent alone are the shareholders of the Company at the time of incorporation. The authorized capital and the paid capital of the company was 1000 equity shares of Rs. 100/- each and petitioners 1 and 2 and the 2nd Respondent have been allotted 400, 300 and 300 shares of Rs. 100/- each respectively. According to the petitioners there was no change in the capital of the company till the year 2004 and in the year 2005, the 2nd Respondent had resigned from the Directorship of the Company on his own and he has also duly transferred his 300 equity shares to the 1st Petitioner during the year 2006.
5. During the financial year 2006, the authorized capital was increased to Rs. 7, 00, 00,000/- (Rupees Seven Crore Only) divided into 3, 50,000 preference shares of Rs. 100/- each and 3, 50,000 equity shares of Rs. 100/- each. Out of the said capital 3, 50,000 preference shares and 2, 57,300 shares have been allotted to the 1st petitioner and 2000 equity shares have been issued to the 2nd petitioner. There was no change either in the board of directors and statutory auditors of the Company.

During the year 2005 the Company acquired a land at Ooty from a partnership firm viz M/s. Nilgiri Enterprises for an amount of Rs. 7, 30, 00,000/- for which the capital of the Company was increase to Rs. 7, 00, 00,000/- crores. The said property was purchased for the purpose of running a hotel management institute viz Merit Swiss Asian School of Hotel Management under a trust viz Merit International Education Foundation.

6. The 1st Petitioner was always travelling to overseas countries for his professional pursuits and presently he is stationed at Dubai. Though the 1st Petitioner was out of country, the Company has complied with filing of various documents with the ROC. Accordingly the AGMs for the year 2007, 2008, 2009, 2010, 2011 and 2012 have been convened and filed annual reports for the said years with the ROC. Recently when the petitioners have attempted to file other statutory documents other than those have already been filed, it was found that the same balance sheets have been filed clandestinely by the 2nd Respondent and without the knowledge and authorization of the petitioners. The following actions have been orchestrated by Respondents No.2 in collusion with Respondent Nos. 3 to 9 and they have filed the following forms:

(i) Filing Form 20B (Annual Return for the year 2007) on 26.08.2012 with changed address of the Registered office of the Company.

(ii) Increasing the paid up capital of the company from 6, 10, 00, 000/- to Rs. 7, 00, 00,000/- by allotting 90,000 equity shares to the 2nd Respondent and filing Form No 2 for the said allotment illegally.

(iii) Filing Form 20B, Form 23AC, Form 2 and Form 66 for the year ending 31.03.2007, 31.03.2008, 31.03.2009, 31.03.2009 respectively on 26.08.2012, Filing Form 20B, Form 23AC, form 2 and Form 66 for the year ending 31.03.2010, 31.03.2011 respectively on 27.08.2012.

(iv) Filing of Form 2, 5, 18, two sets of Form 20B and Form No.32 respectively on 24.10.2012 and 29.10.2012.

7. The Petitioners 1 and 2 alone are the shareholders and directors of the Company after exit of the 2nd Respondent as a director of the Company in the year 2005 and as a shareholder in the year 2006. The petitioners never authorized R2 to convene the meeting and filing documents with ROC at any time and all the filing were filed with the forged signatures of petitioners 1 and 2. In fact the digital signature of the 1st petitioner was obtained without his knowledge and prior permission by the R2. The change of registered office mentioned in Form 20B for the year 2007 is also contrary to the truth whereas the registered office of the

Company was shifted twice, first in the year 2009 and later in the year 2010 and mentioning the new address in the annual report for the year 2007 is nothing but false.

8. It is mentioned that there is no need for transfer of shares of these petitioner to the 2nd Respondent and also no need for increasing paid up capital of the Company. The purported transfer of shares of petitioners and allotment of equity shares by redeeming the preference shares to the R2 have also been done by the R2 to usurp the control of the company from the petitioners. The R2 also has changed the auditors of the Company without the consent of the board and the shareholders who are the petitioners. The powers for allotment of shares, transfer of shares, and appointment of directors are vested with the board of directors consisting only the petitioners. The R2 in collusion with the Respondents 3rd to 9 has done the said illegal acts only with an intention to usurp the Company from the petitioners.
9. The Respondent 2 has filed counter statement wherein in para (i) he has accepted that he is ceased to be the director of the company since year 2005. The R2 has simply denied all the averments made in the petition without filing any documents in support of his submissions made in the counter statement. It is mentioned that he has arranged unsecured loans for the purpose acquitting the property at Ooty with an understanding that if the Company fails to service the loans, the

loans would be converted into equity. The funds of the Company were diverted by the 2nd Petitioner for her personal benefit. The 2nd Respondent had taken all the steps on the basis of Power of Attorney executed by the Petitioners and has taken prudent decisions to manage the affairs of the Company. The 2nd Respondent had also stated that the financial statements which are not true collated and certified by one Mr.B. Prabakar, Chartered Accountant and he was the person responsible for the rift in the family for which the R2 made complaint before the Institute of Chartered Accountant of India. The petitioners have filed Annual Reports hurriedly at one shot based on false and inadequate records with fraudulent motives suppressing the important facts in respect of funding for the property of the company. In the said statement the bank accounts operated by the 2nd petitioner were not shown and neglected. Therefore he prayed to dismiss the petition.

10. The 3rd Respondent has filed a letter duly verified by an affidavit wherein it is stated that he has done only the certification and filed the same in professional capacity.

11. Shri. Thriyambak J Kannan, the learned Counsel for the petitioners has reiterated the above during his submissions. Since the Respondents continued to be absent for the hearings, the Petitioners were directed by this Tribunal to issue notice by way of publication. Accordingly the publication was made by way of notice for appearance of the

Respondents. This Tribunal having satisfied with the substituted service of notice to the Respondents and when they were absent and there were no representation on their behalf they were proceeded ex-parte. I feel it proper to consider the submissions made in the counter for the purpose of deciding the issue.

12. Heard Counsel for petitioners and perused the petition, documents filed and the Counter filed by of the 2nd Respondent.

13. Now following are the point for consideration:-

(a) Whether the petitioners made a clear case of oppression and mismanagement in the affairs of the Company?

(b) Whether the 2nd Respondent has been authorized to take the actions enumerated in the petition by the petitioners?

(c) Whether the prayers made in the petitions can be allowed *in toto*?

14. It is a fact that the petitioners are alone the shareholders of the company after the exit of the 2nd Respondent as a director in the year 2005 and as a shareholder in the year 2006. The 2nd Respondent himself has accepted in his counter that he is not a director of the Company. Therefore any action to be taken by the Company has to be taken by the board of directors consisting the petitioners alone. The powers of the board of directors such as allotment of shares, transfer of shares, convening the board and general meeting and appointment

of directors are envisaged in the Articles of Association (AOA). Any action taken in violation of the AOA would be illegal and void ab initio as such the filing of forms, increase of paid up capital, transfer of shares of the petitioner to the 2nd Respondent, allotment of shares to the 2nd Respondent and appointment of Respondent No.6 to 9 done by the 2nd Respondent has stated that he has acted on the basis of Power of Attorney (POA) executed by the petitioners in the interest of the Company but he has failed to submit copy of the POA along with counter. The functions of the board of directors cannot be delegated to a third party by way of Power of Attorney and even if it is done there will not be any sanctity to the MOA and AOA of a company. Even if it is admitted that the failure of servicing of loans would entitle to convert the loans in to equity, the 2nd Respondent ought to have taken up the matter with the Company for such conversion and that he has no power to transfer the shares of petitioners to himself in violation of such condition. All the submissions of R2 made in his counter are not supported by any document and simple denial of the petitioner's contention cannot be considered in any way to decide the issue.

15. In view of the above, I have no hesitation to declare that the petitioners have made out of a case and have established the contentions made in the petitioner and the illegal acts of R2 with support of documents. Further, in view of above I am inclined to allow the petition *in toto* and

accordingly I allow all the prayers made in (A) to (S) under para VIII of the petition. The Company is directed to take appropriate action to implement the above order. Further the petitioners are directed to serve the copy of this order on ROC, Chennai for taking appropriate action in terms of this order.

16. In the result, the Interim orders, if any are vacated and the pending applications, if any are also closed.

17. The company Petition is disposed of with the above directions. No order as to costs.



K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS