

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

**CA. No. 175 of 2017
In
TCP NO. 156/2016**

**In the matter of sections 397, 398 and 402 of the Companies Act, 1956
R/w sections 56, 57, 58 & 59 of the Companies act, 2013**

M/s. Gangotri Textiles Limited Applicant/Petitioner

M/s. Jagannath Textiles Company Ltd & Othrs Respondents

Parties Present:

- (1) Mr. Dr. K.S. Ravichandran, PCS for Applicant/Petitioner
- (2) Mr. R. Vidyashankar, Counsel for Respondent 1
- (3) Mr. R. Ashok, Counsel for R2 to R5

Order Delivered on: 29.11.2017

Per: Shri. Anantha Padmanabha Swamy, Member (Judicial)

ORDER

1. The application under consideration is filed under section 242(4) of the Companies Act, 2013 (the Act, 2013) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (the Rules) by the applicant who is the petitioner in TCP No. 156 of 2016. The applicant has filed the present application seeking an order to amend the prayers made in the main petition by adding the pleadings and the documents to be incorporated which are stated in Schedule A and relevant prayers which are attached as Schedule B to the application. The applicant has also filed a



separate application in CA No. 174 of 2017 for impleading 3 individuals as Respondents 7 to 9 in the main petition.

2. The Learned PCS for the applicant herein submitted that the Applicant/Petitioner has filed a petition under section 397/398 and 402 of the Companies Act, 1956 and upon hearing the petitioner an order was passed on 15.10.2015 wherein the 1st Respondent Company has been directed to issue notice of the shareholders for general meetings and directors to the board meetings. In complete contrary to the said order, the Company has convened Extraordinary General Meetings (EGMs) on 12.03.2016 and 14.09.2016 and increased the authorized capital from Rs. 40 crore to Rs 45 crore and allotted shares on preferential basis respectively. The matter of earlier increase in capital is under challenge in the main petition. The earlier and the present increase of authorized capital were made on the pretext that there is insistence of the banker of the Company. After increasing the authorized capital, the shares have also been allotted to the proposed respondents in the board meeting held on 02.05.2016.

3. The learned PCS further submitted that the applicant has made an investment to the tune of Rs. 15 crore in the preference capital of the Company and the dividend @ 6% is due from the year 2004. On account of the failure of the Company, the applicant is entitled for voting as envisaged by Section 47(2) of the Companies Act, 1956. In addition to the EGMs held on 12.03.2016 and 14.09.2016, the Annual General Meeting (AGM) was also convened on 15.09.2016 and no notices either for the EGMs and for AGM was issued to the applicant as per the requirement of section 47(2) of the Companies Act, 1956 or in compliance with the order made by the Hon'ble Tribunal on 15.10.2015. By the allotment made on 18.09.2013, the voting right of 45.57% has been reduced to 39.56% and it has been further reduced to 34.95% due to the allotment made on 02.05.2016. The company

has disregarded to the statutory right of the applicant and also violated the order made on 15.10.2015. The learned PCS submitted that without the support of the petitioner, the question of passing any special resolution does not arise. In view of the above, the learned PCS submitted that it is inevitable to incorporate necessary pleadings with documents in the main petition and relevant prayers also to be added in the main petition.

4. The learned Counsel for the R1 filed a common counter for the application for impleading and also for this application and raised a preliminary objection that the application is not backed by any authority conferred on the executant by the board of directors of the applicant Company. The increase in the authorized capital and allotment of shares has been made on the specific insistence of State Bank of India who is the banker of the R1 Company. The very same bank is challenging the increase in capital who has insisted for the same and that the application has been signed by none other than the nominee director of the bank. The notice for the EGM held on 29.04.2016 was issued to the applicant and it was duly received by them. He has also submitted that there is no illegality in convening the AGM on 15.09.2016 and denied that there was no notice for the said AGM and that there is no violation of provision of section 47(2) of the Companies Act, 1956.

5. The R2 to R5 have filed a memo adopting the counter filed by R1 in the matter.

6. Heard and perused the pleadings of both the parties.

7. Now the point for consideration is whether the applicant has made out of any case to amend the main petition.



8. It is on record that there was an order of CLB dated 15.10.2015 wherein the R1 Company was directed to issue notice to the shareholders for the general meetings and directors to the board meetings. It is the contention of the Applicant that no notice whatsoever has been issued for the EGMs and AGM whereas R1 contended that the notice was issued to the EGM held on 14.09.2016 and it was duly received and a copy of the same was also attached with their counter. Prima facie, it is an acknowledgement, anyhow, it was not mentioned that on whose behalf the same was received and no date of receipt has also been stated in the acknowledgement. In view of this, it cannot be termed as proof of service of notice on the applicant and the submission that the notice was duly served on the applicant is not substantiated. Further, the R1 has not produced any proof of service of notice on the applicant for the EGM held on 12.03.2016 and the AGM held on 15.09.2016. In view of the above observations, I am inclined to allow the application and I permit the applicant to amend the petition as prayed. I also direct the applicant to file a fresh petition with amendments as prayed and also arraying the proposed respondents as Respondents 7 to 9 as per the order made in CA. No. 174 of 2017. With the above directions this application is disposed of. No order as to costs.



K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)