

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

**CA. No. 174 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: K. 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 permitting him to implead the proposed 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 1<sup>st</sup> Respondent Company has been directed to issue notice to the shareholders for general meetings and directors to the board meetings. In total 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 per 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 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 prayed to allow the application.

4. The learned Counsel for the R1 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. The learned Counsel for the R1 submitted that the R1 Company reserves the right of filing detailed pleadings in merit in respect of the allegations made in the application on the event of allowing this application.

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

6. Heard and perused all the pleadings of both the sides.

7. Now the point for consideration is whether the applicant has made out any case to implead the proposed respondents in 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 feel it proper to allow the application and I permit the applicant to implead the proposed respondents 7 to 9 as Respondents 7 to 9 in the main petition. I also direct the applicant to file a fresh petition arraying the proposed respondents as Respondents 7 to 9. With the above directions the application is disposed of. No order as to costs.

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