

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

Arguments heard on 17.02.2017

Orders passed on 24.03.2017

T.C.P. No.212 of 2016

(C.P.No.31 of 2016)

(Under Sections 397, 398, 402, 403, 406, 207 r/w Schedule XI and
Sections 58 & 59 of the Companies Act, 2013)

Petitioner : Ramabhadran Sivaraman

- Vs -

Respondents : M/s. Star Quarry and Aggregates Pvt Ltd. & 4 Others

Representatives : Shri Anant Merathia, Counsel for Petitioner
Shri A.M.Sridharan, Counsel for R1, R2, R3 & R5
Shri S.P.Muralikrishnan, Counsel for R4

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

ORDER

CH. MOHD SHARIEF TARIQ (ORAL) :

1. The company petition C.P.No.31 of 2016 was filed before the CLB on 25.4.2016 that came to be transferred to NCLT and renumbered as TCP No.212 of 2016. The petitioner has filed the petition against five Respondents u/s 397, 398, 402, 403, 406, 237 r/w Schedule XI of the Companies Act, 1956. Respondent No.1 is a company having name and style "Star Quarry and Aggregates Private Limited" (for short '1st Respondent company'). It is a private company incorporated on 1.1.2009 under the provisions of the Companies Act, 1956 vide CIN 14292KL2009 PTC023638 falling under the jurisdiction of Registrar

of Companies, Ernakulam, State of Kerala. The registered office of the company was situated at KP 18/1074, New Bangalaw, Kadakkal, Pin code-691536, the premises owned by the petitioner.

2. The authorised share capital of 1st Respondent at the time of incorporation was Rs.5 lakhs only, divided into 5000 equity shares of Rs.100/- each. The paid up share capital on incorporation was Rs.3 lakhs divided into 3000 equity shares of Rs.100/- each. The table given below demonstrates the number of shares with ratio of the paid up capital owned by the shareholders who subscribed to the Memorandum of Association :

Sl. No.	Name of shareholder	No.of Equity shares	Nominal value per Equity share	Ratio to total paid up capital
1	Ramabhadran Sivaraman, Petitioner	1000	100	33.33
2	Muraleedharan Vasudevan 2 nd Respondent	1000	100	33.33
3	Shajikumar Mancodu Peethambaran, 3 rd Respondent.	1000	100	33.33
Total		3000		100.00

The following persons were appointed as the First Directors of the Company :-

S.No.	Name of shareholder	Designation
1	Ramabhadran Sivaraman (Petitioner)	Managing Director
2	Muraleedharan Vasudevan (2 nd Respondent)	Director
3	Shajikumar Mancodu Peethambaran (3 rd Respondent)	Director

3. The main object of the company as per the Memorandum of Association is to explore, produce, process, recover, formulate, mix and manufacture, mine or otherwise acquire, own, hold, use, lease, mortgage, pledge, buy, sell, exchange, distribute, assign, transfer or otherwise dispose of, trade, deal in and deal with, import and export any and all classes and kinds of rock products including rock blocks, etc.

4. The petitioner is a promoter shareholder who was holding 1000 equity shares of Rs.100/- each constituting 33.33% of equity capital was appointed as the Managing Director of the 1st Respondent Company. He alleges that he has been illegally removed from the post of Managing Director and his shareholding has been illegally diluted from 33.33% to 6.67% by way of illegal allotment of shares by 2nd and 3rd Respondents. Therefore, *inter alia* he challenges the resolutions passed for his illegal removal from the post of Managing Director and the illegal allotment of shares as well.

5. The petitioner specifically pleads that in the financial year 2012-13, the petitioner fell ill and was bedridden. Taking undue advantage of the situation, the 2nd and 3rd Respondents have filed various Forms in the MCA Portal without following due process of law. It has been shown in their Forms as if the following meetings (Board/General) had taken place and the composition of the Board is changed and the shares were allotted to the Respondents. The details of the Forms filed by the 2nd and 3rd Respondents are as follows :-

Sl. No.	Date of meeting	Purpose of meeting	Forms filed with MCA and date of filing
1	Board Meeting dated 21.05.2014	Petitioner was redesignated from the position of Managing Director to Director and Respondent 2 was appointed to the office of Managing Director	Form DIR-12 dated 30 th May 2014
2		Shifted the registered office of the Company from K.P.18/1074, New Banglaw, Kadakkal-691536 Kerala to Thannimoottil Veedu, Chingeli, Pulippara P.O., Kadakkal-691536, Kerala w.e.f.21.05.2014	Form INC 22 dated 30 th May 2014
3	Board Meeting dated 03 rd March 2014	Board meeting date given in the MGT 14 filed dated 05.06.2014	Form MGT 14 filed dated 05 th June 2014
4	EGM dated 28.03.2014	Authorised share capital of the company was enhanced from Rs.5 lakhs divided into 5,000 equity shares of Rs.100/- to Rs.15 lakhs by creation of 10,000 additional equity shares of Rs.100/- each, and Clause V of the MOA and Clause 4 of the AOA was amended to give effect to the aforesaid capital enhancement.	Form SH-7 filed dated 05 th June 2014
5	Board meeting dated 20.06.2014	12000 Equity shares of Rs.100/- each were allotted to existing shareholders Respondent 2 and Respondent 3 respectively thereby increasing their shareholding to 46.67% each to the paid up capital	Form PAS 3 dated 20 th June 2014
6	Board Meeting dated 25.08.2014	Approval of Financial statements	Form 23 AC and 20B filed dated 24 th March 2015

6. It is alleged that the Respondents ought to have given notice as required under Section 173(3) of the Act 1956 to the petitioner before convening the Board meetings allegedly held on 21.05.2014 and 20.06.2014 to pass the resolutions that directly affects the rights of the petitioner both as Director and Shareholder of the company. The position

of the petitioner has been changed from Managing Director to Director and the shareholding of the petitioner has been reduced from 33.33% to 6.70%. No notice was ever given to the petitioner for the Board meetings allegedly held on 21.05.2014, 20.06.2014 and 25.08.2014 and therefore, the resolutions passed for the change in designation of the petitioner from Managing Director to Director, shifting of registered office, allotment of 12000 shares and approval of accounts for the financial year 2013-14 are absolutely illegal and invalid and cannot be given effect to. Therefore, all the Forms i.e. DIR-12, PAS-3, MGT-14, SH-7 and INC-22 are liable to be set aside as illegal and invalid. It has further been averred by the petitioner that the Respondents without even altering Clause 4 in the Articles of Association of the company with respect to the Capital Clause have illegally increased the Authorised share capital of the company from Rs.5 lakhs to Rs.15 lakhs. The minutes of the EGM that has been filed as an attachment to Form MGT-14 claims that Clause 4 of the Articles of the Company has been amended. Clause 4 of Articles of Association of the Company contains the provisions relating to Section 3(1)(iii) of Companies Act, 1956 that is applicable to a Private Company. The Respondents have illegally altered the Authorised Capital by amending Clause 4 of Articles of Association of the Company. The certified true extracts of the Minutes of the Board meeting has been signed by the 2nd and 3rd Respondents and Form MGT-14 has been verified and certified by the 4th Respondent. Therefore, Form MGT-14 and the attachments thereto

are liable to be set aside as *void ab initio* and the resolutions allegedly passed at the EGM cannot be given effect to.

7. The petitioner has levelled the allegations against 4th Respondent, the Practising Company Secretary who is stated to have certified all the Forms viz. DIR-12, PAS-3, MGT-14, INC-22 and SH-7 illegally, without due verification of the records of the company, committed gross negligence and failed to fulfil his professional duties and committed serious mistakes amounting to negligence, dereliction of duty and therefore, he is liable to be punished under Section 447, 448 of the Companies Act, 2013 for his illegal acts along with other Respondents. It has also been averred by the petitioner that he had some discussions with the 2nd and 3rd Respondents through a common friend to amicably settle the issue but all in vain.

8. It has also been alleged by the petitioner that the Respondents 2 and 3 have also illegally appointed 5th Respondent as Director of the Company on 29.06.2015. Whereas there was no need for the 1st Respondent to induct new Director and the 2nd Respondent has illegally filed Form DIR12 with ROC, Ernakulam without taking any Board meeting. Therefore, he prayed that the illegal appointment of 5th Respondent be set aside. The petitioner stated that the 2nd Respondent who is claiming himself as the Managing Director of the Company has issued notice dated 05.04.2016 calling for EGM on 29.04.2016 to consider removal of the petitioner as Director of the company and also contemplated to pass a

resolution for increase of authorised capital from Rs.15 lakhs to Rs.25 lakhs in the EGM scheduled on 29.04.2016. In the premises, the petitioner contended that all the series of acts of the Respondents are clearly unfair, unjust and harsh towards the petitioner and constitute oppression. This is being done unilaterally by the 2nd and 3rd Respondents to exclude the petitioner from the decision making process and the following prayers have been made :-

8.1 To declare that the acts of the Respondents 2 to 4 are oppressive and prejudicial to the interest of the 1st Respondent Company and the petitioner.

8.2 To set aside the change of designation of the 2nd Respondent as Managing Director on 21.05.2014 as illegal and consequentially restore the position of the Petitioner as Managing Director of the 1st Respondent Company.

8.3 To set aside the shifting of registered office of the 1st Respondent company from KP-18/1074, New Bangalaw, Kadakkal, Kerala-691536 to Thannimoottil Veedu, Chingeli, Pulippara P.O. Kadakkal, Kollam, Kerala-691536, as illegal.

8.4 To set aside the allotment of 6000 equity shares of Rs.100/- each to the 2nd and 3rd Respondents on 20.06.2014 as illegal and consequentially rectify the register of members of the company so as to delete 6000 shares from the folio of the 2nd and 3rd Respondents respectively.

8.5 To set aside the increase of Authorised share capital of the company from Rs.5,00,000/- to Rs.15,00,000/- as illegal

8.6 To set aside the resolutions illegally passed at the Board meetings allegedly held on 21.05.2014, 20.06.2014 and 25.08.2014 as null and void ab initio.

8.7 To set aside the Forms DIR-12, PAS-3, INC-22, 23AC and 20B for the years ending 31.03.2013 and 31.03.2014 that were illegally filed with ROC, Ernakulam

8.8 To set aside the resolutions illegally passed at the Extraordinary General Meeting allegedly held on 28.03.2014 as null and void ab initio.

8.9 To set aside the Forms MGT-14 and SH-7 that were illegally filed with ROC, Ernakulam.

8.10 To set aside the appointment of the 5th Respondent as a Director of the 1st Respondent Company and consequentially set aside Form DIR-12 filed for the appointment of 5th Respondent as a Director of the Company as null and void ab initio.

8.11 To direct for an investigation to be made in respect of the dealings and transactions of the Respondents No.2 to 4 in connection with the management and affairs of the company and an independent Auditor be appointed by this Hon'ble Board to carry out such investigation and further appropriate orders be passed under Section 406 of the Companies Act, 1956, read with Schedule XI thereof.

8.12 Appropriate reliefs be passed under and in accordance with Section 402 of the Companies Act, 1956.

9. The 2nd, 3rd and 5th Respondents have filed a joint counter to the C.P. wherein all the allegations levelled against them are denied except those which are borne by record. Counter allegations have been made

against the petitioner stating that the petitioner did not contribute anything to 1st Respondent company. But, he made the 2nd and 3rd Respondents to believe that he had the experience of getting Government approvals and licences for quarrying business and managing quarries. Having believed the same, the 2nd and 3rd Respondents purchased the land to an extent of 8 acres and 51 cents, in the joint names of the petitioner and the 2nd and 3rd Respondents and in fact the 2nd Respondent paid a sum of Rs.22.14 lakhs towards the purchase of lands. The bank account having new No.57032244483 of Respondent-2 is stated to have shown the withdrawal for the purpose of making payment to the vendors of the land. It has further been contended by the said Respondents that the petitioner, 2nd and 3rd Respondents have given their consent to 1st Respondent company for excavating and cutting granites stones, constructing storage buildings and all facilities in relation to granite stones on the said lands from 18.10.2010 for a period of 12 years. It is further stated that the petitioner obtained quarrying lease on 12.10.2010 from the Government of Kerala and thereafter obtained licence to possess explosives on 31.7.2012 on behalf of the company which was forwarded to the company by the Ministry of Commerce and Industries vide its letter dated 16.10.2012 but the petitioner has not allowed the use of the said licence pertaining to the explosives. Because, he refused to divulge the User ID and Password. Therefore, the company is not doing any business due to various hurdles imposed by the petitioner. It has been alleged by the said

Respondents that the 2nd and 3rd Respondents became acquainted with Respondent-5 who assured them to put the company on production map and when the company was not having sufficient funds to buy machineries and equipments, the 2nd and 3rd Respondents have decided to increase the authorised and paid up capital of the company vide Board meeting held on 3.3.2014 wherein it was decided to hold Extraordinary General Meeting on 28.03.2014 for increasing the authorised capital from Rs.5 lakhs to Rs.15 lakhs. The AGM is stated to have been convened at the residence of the petitioner on 28.03.2014 for which the 2nd Respondent issued notice on 3.3.2014 and the petitioner participated and voted against the increase in authorised capital. Thereafter R2 issued notice on 10.05.2014 for convening of Board meeting on 21.05.2014 to consider the change in the designation of the petitioner from Managing Director to Director and appointment of R2 as Managing Director, shifting of Registered office and issue of offer letter for further issue (rights issue) of shares and the petitioner did not participate in the Board meeting held on 21.05.2014. It is also contended that Respondent-2 issued offer letter for issue of shares and notice on 21.03.2014 by Registered Post, for convening Board meeting on 20.06.2014. But the petitioner did not subscribe to further issue of shares and refrained from attending the Board meeting on 20.06.2014. The main allegation against the petitioner that has been levelled by the above said Respondents is that the petitioner has moved to get the quarrying lease cancelled by making a representation to

the Director of Mining and Geology vide letter dated 05.08.2014 and the Director of Mining and Geology vide letter dated 23.01.2015 denied to cancel the quarrying lease. On the other hand, the petitioner has filed an appeal before the Industries Department, Government of Kerala. The Industries Department vide order dated 24.07.2015 observed that the request of petitioner for cancellation was not maintainable. Then the petitioner has filed Second appeal before the Industries Department, Government of Kerala which was dismissed on 12th May 2016 and now the petitioner filed a writ petition before the Hon'ble High Court of Kerala in W.P.No.19712/2016 for setting aside the order of the Director, Mining and Geology, Industries Department, Government of Kerala which is pending disposal. One more allegation has been levelled by the above mentioned Respondents that the petitioner on his own blasted some explosives in areas outside the quarrying areas and gave a false complaint against Respondents 2 and 3 in Kilmanoor Police Station wherein Complaint No.693 of 2015 has been registered and the Respondents 2 and 3 have challenged the same in CrI. Misc. Application No. 7903/2015 before the Hon'ble High Court of Kerala and the same is pending. In short, the Respondents stated in the counter that the petitioner by virtue of Article 33(B) of the Articles of Association of the company is ceased to be the Managing Director as he was only appointed as Managing Director from the date of incorporation of the company till the conclusion of the First AGM that was conducted on 28.06.2010 for which notice was issued

on 03.06.2010 and whatever the Board Meeting and EGM conducted by the Respondents that are in accordance with the law and nothing illegal has been committed. The reason as stated by the above mentioned Respondents for filing the CP is that the petitioner demanded 41% of the share capital which was refused. Therefore, he started to raise hurdles in the way of 1st Respondent company by different ways and means. However, it is pertinent to mention that the illness of the petitioner has been admitted by the Respondents in their reply and it has been specifically stated that this Tribunal, in exercise of the powers conferred under Section 242 of the companies Act, 2013, direct the petitioner to sell his shares either to the company or to the Respondents.

Respondent-4 has filed a separate reply wherein he has briefly stated that he has certified Forms MGT14 and INC22 only after due verification of all the records of the R1 company and that he has not certified Forms DIR12, PAS3 and SH7 as claimed by the petitioner in his petition and that he has duly verified all the records and also obtained declarations from the Directors stating all the details and information with respect to R1 company for increase of the authorised capital and shifting of registered office of the company and the same is filed in MCA portal. R4 further contended that the allegation that he certified DIR12 notifying the removal of the petitioner from the office of the Managing Director to the Director and the appointment of Respondent-2 as Managing Director is not correct, as he did not certify the said form. Similarly for notifying

appointment of Respondent-5 as Director of R1 company he did not certify Form DIR12 and there is no evidence produced before the Tribunal to establish that he has committed negligence or dereliction of duty. So, he may be relieved from the case, it is prayed by R4.

10. The petitioner has filed a rejoinder wherein he has denied the counter allegations levelled by the answering Respondents. However, he stated that the allegation with respect to non-sharing of User ID and Password for placing orders for explosives is not backed by any evidence. In relation to the litigation pertaining to the dispute of the quarrying lease, he stated that the matter is *sub judice* before the Hon'ble High Court, Kerala. Therefore, he does not deem it appropriate to respond to a matter which is *sub judice*. He further contended that he never received any notice for EGM which is allegedly held on 28.03.2014 for increasing the authorised share capital and the Respondents who claimed to have issued the notice did not produce the proof of delivery of the same. However, the redesignation of the petitioner from the original post of Managing Director and the appointment of 2nd Respondent as Managing Director and shifting of the registered office of the 1st Respondent company from the premises of the petitioner's house to the present address has been done on 21.05.2014 and the Respondent with a view to dilute the shareholding of the petitioner from 33.33% to 6.70% on 20.06.2014 allotted 6000 equity shares each to 2nd and 3rd Respondents in an allegedly held Board meeting for which no notice was given to the petitioner. He also denies the

the counsel for petitioner referred to the decision of the CLB, Addl. P.B, Chennai given in *Ansar Khan and Kalimulla Shariff Vs Fincecore Cables Private Limited, Fazlulla Shariff, Kanees Fathima and State Bank of India* reported in MANU/CL/0097/2006, wherein it has been held that when the mandatory requirement of giving notice is not met, the resolution passed in the meeting of the Board becomes invalid.

14. The authorised share capital of the company is enhanced from Rs.5 lakhs to Rs.15 lakhs and no notice was given to the petitioner being the shareholder, thereby reducing his shareholdings from 33.33% to 6.70%. Though it is prerogative of the Board to allot shares and the power should be exercised in the interest of the company not for any ulterior purpose. In the present case, by the act of the Respondents, the very shareholding of the petitioner has been reduced without giving him any notice and opportunity to subscribe. As there is no proof that he has been given the notice and offer to subscribe, it is concluded that the same is oppressive of the rights of the petitioner and is in breach of fiduciary duty of the Director. In support of this, the counsel for petitioner referred to the decisions of CLB, Addl PB, Chennai, given in the case titled *S.N.Harish and Ors. Vs Pods Biotech Private Limited and Ors.* reported in MANU/CL/0099/2012 wherein it has been held that the conduct of respondents to increase authorised capital and allot shares to themselves is oppressive in nature. in *Mrs.Uma Pathak and Shri Rajat Pathak Vs Eurasian Choice International Pvt. Ltd., Shri J.C.Pathak, Shri Rakesh*

Kumar Pathak and Shri Rajiv Kumar Pathak reported in [2004]122CompCas922(CLB), it has been held that while issuing further shares, the Board of Directors discharge their fiduciary responsibilities and that if the shares are issued with the sole object of creating a new majority or with the view to convert a majority into a minority, then the action of the Board is not only in breach of the fiduciary responsibilities but also a grave act of oppression against the existing majority. A similar opinion has been expressed in S.Varadarajan and P.Logusundaram's case reported in [2007]3Comp. LJ499(CLB).

15. The office of the 1st Respondent company has been shifted from the premises of the petitioner's house without information to the petitioner and without a valid resolution of the Board of Directors. The said action of the Respondents is also not in accordance with the law. Moreover, a notice of the Board meeting was not served on the petitioner and the appointment of R2 as Managing Director is also illegal. Because, the Respondents who are duty bound to serve notice by RPAD but they have not followed the procedure and no document was placed on file to prove that the notice was served on the petitioner. Therefore, the appointment of R2 as Managing Director is illegal. There was no need to induct the new Director, but R2 filed Form DIR-12 with the ROC concerned without conducting any Board meeting. The appointment of R5 as Director is made not only without giving notice to the petitioner but also without convening duly constituted Board meeting and therefore, the same is

invalid. The Counsel for petitioner, in support of his arguments, has referred S.N.Harish and Ors. Vs Pods Biotech Private Limited and Ors.(supra) wherein it has been held that in the absence of a duly constituted board meeting, appointment and subsequent appointment of any Director(s) is illegal.

16. The reply filed by Respondent-4 shows that he has not done anything on his own but on the basis of the record that has been produced by the Respondents before him, which he believed to be true. Therefore, R4 is exonerated from the charges levelled against him. However, he is cautioned to take due care and diligence while discharging his duty, in future.

17. In the light of the above discussions and relying upon the ratio laid down in the cases referred above, we allow the Company Petition and declare that the acts of Respondents 2 to 4 are oppressive of the rights of the petitioner and prejudicial to the interest of R1 company. Therefore, we set aside the change of designation of the petitioner that was made on 21.05.2014 and Consequentially restore the position of the petitioner as Managing Director; set aside the decision shifting of registered office of R1 company to “Thannimoottil Veedu” Chingeli, Pulippara P.O., Kadakkal, Kollam, Kerala-691536 and restore the registered office to its original location, i.e. KP-18/1074, New Bangalaw, Kadakkal, Kerala-691536; declare the allotment of 6000 equity shares of Rs.100/- each to R2 and R3 on 20.06.2014 as illegal and order to rectify

the register of members of the company in order to delete 6000 shares from the folio of the 2nd and 3rd Respondents respectively; set aside the increase of Authorised share capital of R1 company from Rs.5 lakhs to Rs.15 lakhs; declare the resolutions passed at the Board meetings allegedly held on 21.05.2014, 20.06.2014 and 25.08.2014 as null and void ; set aside the filing of Forms DIR-12, PAS-3, INC-22 and 20B for the years ending 31.03.2013 and 31.03.2014 with the ROC, Ernakulam; set aside the resolutions passed at EGM allegedly held on 28.03.2014 as null and void ; set aside the filing of Forms MGT-14 and SH-7 that were illegally filed with ROC, Ernakulam ; and set aside the appointment of Respondent No.5 as Director of R1 company; set aside the filing of Form DIR-12 filed in relation to the appointment of R5 as Director of R1 company; and also set aside the resolution passed on 29.04.2016 by which increase of the authorised capital from Rs.15 lakhs to Rs.25 lakhs and removal of the petitioner as Director of R1 company were contemplated and declare that the petitioner has been the Managing Director of R1 company throughout.

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19. The petitioner is directed to withdraw the petition [W.P.No.19712 of 2016] filed before the Hon'ble High Court of Kerala, to get the quarrying lease released from litigation and make available the User ID and Password of the licence for explosives to 1st Respondent Company to commence its business as per its object. The answering Respondents and the petitioner are directed to start business of the Company by

implementing this order within four weeks from the date the copy of the order is received, or the date on which the order gets uploaded on the website of the NCLT, whichever is earlier. Accordingly, the Company Petition stands disposed of.



ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)



CH MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)