

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

TCP. No. 184 of 2017
In
CP. No. 66 of 2015

**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. Venkatraman Shivkumar Applicant/Petitioner
Vs.
M/s. Then India Energy Private Limited & 13 Ors Respondents

Parties Present:

(1) Mr. K. Ramasamy, Advocate	} Counsel for Applicant/Petitioner
(2) Mr. G.V. Mohan Kumar, Advocate	
(3) Mr. A. Ranjarajan	
(4) Ms. Kavitha Balaji	
(5) Mr. Panchiappan	
(6) Mr. R.S. Bhatia, PCS	
	For Respondent No.1
	For Respondent No.2 & 3
	For Respondent No 4 & 11
	For Respondent No.5, 6, 12, & 13.

Order Delivered on: 30.11.2017

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

ORDER

Under consideration is a petition filed under sections 58 and 59 of the Companies Act, 2013 (the Act, 2013) read with 397, 398, 402 and Schedule XI of the Companies Act, 1956 (the Act 1956) alleging various acts of oppression and mis-management in the affairs of M/s. Then India Energy Private Limited (the Company) and the petitioner sought the following reliefs against the Respondents:

- (i) To declare that the Form 20B with annual return upto 30.09.2014 filed by the 5th and 6th Respondent without any authority and declare that the same was fabricated and filed by the respondent Nos 5 and 6 which amounts to illegal, null and void.
- (ii) To declare that there was no Extraordinary General Meeting of Respondent No. 1 allegedly held on 9th August 2015 and consequently declare all the resolutions allegedly passed was fabricated by the respondent no. 7 and filed by him with the respondent nos 14 and declare the same as illegal, null and void.
- (iii) To declare the Form DIR 12 filed by the 7th respondent was fabricated and filed with 14th respondent and declare it as illegal and null and void.
- (iv) To hold that the respondent No.s 5,6,7,9,10 & 12 are responsible for all the acts complained in this company petition and consequently hold that they are responsible for all the monetary loss to the 1st Respondent company including any fee, additional fee, penalty, violation under provisions of the Companies Act, 1956 and 2013.
- (v) To declare the following forms filed with connivance of the 5 and 6th respondent without the knowledge and authority of the petitioner;
Form No, 23AC (3 nos) all filed on 22.04.2014
Form 23AC filed on 26.04.2014
And consequently declare the filing of the above forms is illegal and null and void and direct the 14th respondent to remove the same from MCA 21 portal. Further permit the petitioner to file the appropriate suitable revised return.



2. The brief particulars of the petition are as follows:

- The Company was incorporated in the year 2009 and the 1st, 2nd, 3rd and 11th Respondents alone are the shareholders of the Company. The authorized capital and the paid-up capital of the company is Rs. 5, 00,000/- (Rupees Five Lakh Only) divided into 50000 of equity shares of Rs. 10/- each and the petitioner was holding 9500 equity shares of Rs. 10/- which amounts to 18% of the total paid up share capital of the Company.
- The petitioner who is expert in the field of solar energy and with his effort the company was awarded 100 MW solar and wind powered fuel electricity project in the State of Jammu & Kashmir. The Annual Return up to the AGM dated 30.09.2013 was signed by the petitioner and one of the directors Mr. Varun Sachar while filing the Form 20B furnished a list of shareholders wrongly by including his name holding 9500 shares in the company instead of showing the name of the petitioner. The attachment does not have the signature of the petitioner or Mr. Varun Sachar. The said Form 20B is fabricated and when the petitioner came to know about the attachment, immediately he has taken steps and filed a revised Annual Return.
- The R5 and R6 were appointed as Additional Director and they could hold the office only up to the AGM held on 30.09.2014. The company did not receive any proposal to reappoint them and therefore they have automatically vacated the office. The Company has filed DIR 12 notifying the cessation of R5 and R6 on 21.07.2015.
- R5 and R6 without any authority have filed a Form 20B for the year upto the date of 30.09.2014 by fabricating the documents as if Mr. Varun

Sachar transferred the shares to the petitioner on 18.11.2013 and they have filed Annual Return on 15.05.2014 as if the petitioner has transferred 4525 shares to the R12 and 4525 shares to the R13. No transfer of shares was made by the Petitioner and it was deliberately planned by the R5 and R6 to marginalize the petitioner from the Company.

- Subsequent to the filing of DIR 12 for the cessation of R5 and R6, the R7 has filed a DIR 12 without any authority as if an EGM was held on 09.08.2015 and in the said EGM the petitioner, R2, R3, R4 and R8 was removed from the directorship of the Company. The R9 and R10 were also appointed in the EGM whereas no such EGM was conducted on 09.08.2015 and DIR 12 and the documents are fabricated.
- The husband of R5 who is a Chartered Accountant by profession made all the arrangement to get the digital signature through their men and he has retained the same. Taking advantage of the situation, by misusing the digital signature of the petitioner three Form 23AC were filed on 22.04.2014 and one Form 23AC on 26.04.2014.
- The Company has applied for a Power Purchase Agreement with the Government of Jammu and Kashmir which is worth over Rs. 700 crores and taking into consideration the growth and potential of the Company, the R7 in collusion and connivance with R5 and R6 had fraudulently removed the petitioner and the other directors of the company which amounts fraud within the meaning of 447 of the Companies Act, 2013.
- The R5, R6 and R7 have filed annual return, DIR 12 which did not reflect the true position of the directors and shareholding of the Company and they have made false statements with an intent to mislead the government authorities and public.

The learned Counsel for the petitioner, reiterated the above averments and prayed to allow the prayers sought for.

3. The R5, R6 and R12 have filed the counter and the brief particulars are as follows:

- The petitioner has stated that he is the Director of the Company and he is not a director and it is evident from the documents filed with MCA. The petitioner deliberately not disclosed the relationship of R2 and R4 who are sons of the petitioner. Mr. Subramania Vathiyar Ramaswamy is neither a shareholder nor a director of the Company as on the date of filing of the present petition and no documentary evidence has been attached with the petition. Further the petitioner has stated that Mr. Sugumar is a shareholder holding 15000 shares whereas the said Mr. Sugumar is not a shareholder of the Company.
- The petitioner was instrumental for bringing in the R5 and R6 and they have been appointed on 31.03.2014. The R5 and R6 were appointed again in the AGM held on 30.09.2014. The petitioner has deliberately not disclosed that he had sold his shares to Mr. Varun Sachar on 21.09.2013 and he has repurchased the said shares on 18.11.2013.
- The petitioner has himself transferred 4525 equity shares each to R12 and R13 on 15.05.2014 and executed transfer deeds to that effect.
- The petitioner has stated that the authorized capital was Rs. 5,00,000/- whereas it was only Rs. 1,00,000/-. The petitioner has himself engaged and took the services of Mr. Masuod Hussain Wani, R7. The appointment of R7 was notified by none other than the R2, the son of the petitioner. The petitioner claims that the Company was under

control whereas states that Mr. Varun Sachar has filed an annual return with fabricated documents. The petitioner has transferred 4525 shares each to R12 and R13 by duly executing transfer deed and the value of the shares amounting to Rs. 2,50,030/- was transferred through NEFT on 27.03.2014. The petitioner himself has signed the Annual Return, therefore, it is deemed that the list of shareholders is signed by the petitioner.

- An EGM was duly convened on 09.08.2015 and the resolutions were duly passed and DIR 12 was filed.
- The petitioner has filed DIR 12 regarding the appointment of R5 and R6 on 07.05.2014 whereas now claimed that the Digital signature was with the husband of R7. The Form 23AC for the year ending 31.03.2010, 31.03.2011, 31.03.2012 and 31.03.2013 were filed under his signature and he is well aware of the same.

The learned Practicing Company Secretary for R5, R6 and R12 reiterated the averments and submitted that the petitioner has not approached the Hon'ble Tribunal with clean hands and he has suppressed many vitals fact before the Tribunal. Therefore, he sought for the dismissal of the petition.

4. The 3rd Respondent has filed his counter on his behalf and on behalf of R2 and inter-alia supported the petitioner in his counter. R3 has stated that the Transfer Deed is stamped as 21.03.2014 whereas it was executed on 15.05.2014 which is a void transaction as it is not in compliance with the requirement of section 56 of the Act, 2013. The R3 stated that his signatures were also forged. It is well settled that the transfer effected between transferor and the transferee is not effective without

notice and approval of the transferor until the transfer is registered in the Company's register. The alleged transfer is not appearing in the register of members. The R3 has also endorsed the submission of the petitioner with regard to the appointment of R5 and R6. No EGM was convened on 09.08.2015 and the minutes were fabricated. The R3 sought prayers against R5 to 7, R9, R10, R12 & 13.

5. The R1, R4 and R11 filed memos and adopted the counter of the R2 and R3.

6. The learned Counsel for the petitioner filed the rejoinder wherein inter-alia submitted that the each and every entry made in the bank statement has to be proved by the Respondents to the satisfaction of the Hon'ble Tribunal. The share transfer forms attached with the counter statement are not in accordance with the provisions of Section 56 of the Act, 2013 and rules made thereunder. No transfer has been made by the petitioner on 15.05.2014.

7. Heard. Perused the pleadings of all the parties.

8. After considering the above, the question arises before me is whether the share transfer effected between the petitioner and R5 and R6 is valid, whether the digital signature has been misused and whether the petitioner has made out a case under section 397 and 398 of the Act, 1956.

9. The R5 and R6 and R12 have filed copy of the transfer deed and according to the petitioner, it is not valid as per section 56 of the Act, 2013. The Ministry of

Corporate Affairs has issued a circular No. 19 of 2014 dated 12.06.2014 wherein necessary clarifications about the transfer deed have been given. However, the transfer was effected on 15.05.2014 much before the said circular was issued by the MCA. Even if it is admitted that the transfer deed is not valid as per section 56 of the Act, 2013, the petitioner is answerable for the amount transferred through NEFT on 27.03.2014. The amount is not meagre and no prudent man would receive the amount without getting clarification from the person who has transferred it. The petitioner has simply stated that the each and every entry in the bank statement has to be clarified by the Respondents and without making any submission about the receipt of the amount, he fixes the responsibility on the Respondents. The payment received by the petitioner and no whisper made by him about receipt of the payment, would prove that there is transfer of shares and consideration has also been paid to the petitioner. It is also to be noted that the amount mentioned in the share transfer deed on its execution and the amount transferred to the petitioner much earlier is tallying.

10. With regard to the submissions that the digital signature was misused, I intend to refer **“Guidelines for Usage of Digital Signatures in E-Governance”** issued by The Department of Information Technology, Government of India and Para 6.6 is especially relevant to the averments made by the petitioner. The said guidelines states that “Digital signatures are legally admissible in the Court of Law, as

provided under the provisions of IT Act 2000. Therefore, users should ensure that the private keys are not disclosed to anyone. For example, users generally give their crypto tokens to their personal secretaries or subordinates to sign the documents on their behalf. Any illegal electronic transaction undertaken using a person's private key cannot be repudiated by the certificate owner and will be punishable in the Court of Law." When this being the situation of usage of a digital key, the submissions that the digital key of the petitioner is misused is not substantiated and it is an afterthought made to suit his convenience and he cannot repudiate the same at this stage.

11. Taking into consideration of the above discussions, I held that the petitioner has not made out any case of oppression and mismanagement in the affairs of the Company. Therefore I am not inclined to allow the petition and accordingly I dismiss the petition. No order as to costs.


K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)