

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP No.77/2016
(CP/71/2011)

Sections 235, 237, 397, 398, 402, 403 and 405 of the
Companies Act, 1956 read with Schedule 11 of the
Companies Act

In the matter of

Moana Hongkong Ltd.

Vs.

Moana Technologies (India) Private Ltd. and 8 Ors.

Order delivered on 19th of December, 2017

CORAM :

CH. MOHD SHARIEF TARIQ AND K.ANANTHA PADMANABHA SWAMY, MEMBERS(JUDICIAL)

<i>For the Petitioner(s)</i>	<i>: Mr. Satish Parasaran, Jasmeet Singh, R. Parthasarathy P. Giridharan and Dominic S. David, Counsel</i>
<i>For the Respondents 1,3,5,7,8 &9</i>	<i>: Mr. Saranya Suresh for P.S. Suman,, B. Desikan, Counsels for M/s. A.K. Mysamy Associates</i>
<i>For Respondent No.4</i>	<i>: Proceeded ex parte</i>

No relief sought against R2 and R6 vide proceedings dated 17.10.2016.

ORDER

Per : CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration is the Company Petition No.
71/2011 filed under Sections 235, 237, 397, 398, 402,
403 and 405 of the Companies Act, 1956 read with
Schedule 11 of the Companies Act, before the then

Company Law Board (CLB), Chennai. After the constitution of NCLT, the same has been transferred to this Bench and renumbered as TCP 77/2016. There is one (1) Petitioner and 9 Respondents in the Petition. The Respondent No.4 was proceeded *ex parte* by this Bench vide its Order dated 21.11.2016. No reliefs are sought against R2 and R6 by the Petitioner as has been recorded during the hearing on 17.10.2016.

2. The 1st Respondent Company was initially incorporated on 10.03.2005 under the name and style of M/s. Waterbase Moana Technologies Private Ltd. Thereafter, on 04.05.2007, the name was changed from M/s. Waterbase Moana Technologies Private Ltd. to M/s. Moana Technologies India Pvt. Ltd having CIN No.U05004TN2005PTC055616. Presently, the Registered Office of the 1st Respondent Company is at No.6/317, Raja Street, L.P. Nagar, Kottivakkam, Chennai- 600 041. The Counsel for the Petitioner submitted that the Registered Office of the 1st Respondent has been shifted from No.22, Sadasivam

Street, Gopalapuram, Chennai, 600 086 to No.6/317, Raja Street, L.P. Nagar, Kottivakkam, Chennai- 600 041 at the behest of 5th Respondent, who is the Managing Director of the 1st Respondent Company, by filing Form 18, which is illegal and *non-est* in the eye of law.

3. The Registered Office of M/s. Moana Hongkong Ltd. (Petitioner) is at Unit 3603-06, New Yark Life Tower, Windosor House, 311 Gloucester Road, Causeway Bay, Hongkong. The Petitioner is represented by Nominee Direcotr Mr. Andreas J Agneessens Ronald Everaert. The Petitioner is the majority shareholder of the 1st Respondent Company holding about 75% shares of issued and paid up share capital of the 1st Respondent Company. However, the paid up share capital of the 1st Respondent Company is stated to have been unlawfully raised from of Rs.2,50,00,000/- to Rs.4,25,00,000/- at the behest of 5th Respondent, the Managing Director of the 1st Respondent Company.

4. The 6th Respondent viz., Ashok Nanjapa has been the Director of the 1st Respondent Company since its inception. However, it has been alleged that the 6th Respondent was illegally removed from the Board of the 1st Respondent Company on 27.05.2010. The Respondent Nos. 7, 8 and 9 are the recipients of shares of the 1st Respondent Company, the said allotment is under challenge.

5. The case of the Petitioner is that the Petitioner is holding the majority shares and also has various special managerial rights in the affairs of the 1st Respondent Company by virtue of the Shareholders Agreement dated 31.05.2007. The 1st Respondent Company is carrying on the business of hatchery and grow out Penaeid shrimps through farming, harvesting, culturing, manufacturing, processing or other means or sourcing it locally or from abroad or by other means and marketing, selling importing, exporting and otherwise distributing the same.

6. At the time of the incorporate of the 1st Respondent Company, it had the share capital of Rs.92,00,000/- divided into 92,000 equity shares of Rs.100 each. The issued and subscribed share capital was 1002 shares, out of which 1000 shares were held by the 2nd Respondent and one share each was allotted to Respondent No.6 viz., Ashok Nanajapa and one Mr. P. K. Ramachandran. It has been stated that during the financial year 2007-08, the authorised share capital of the 1st Respondent company was increased from Rs.92,00,000/- to Rs.2,50,00,000/-. The increase in the share capital was pursuant to a shareholders agreement dated 31.05.2007 entered into between the Petitioner, 1st, 2nd and 3rd Respondents. After the increase of the share capital of the 1st Respondent, the issued and paid up share capital of the 1st Respondent was Rs.1,35,01,000/- out of which the Petitioner held 60% shares and the 2nd Respondent held 20% shares and the 3rd Respondent held 20% shares. However, the Respondent Nos. 5 and 6 held no shares in the 1st Respondent.

7. As per the shareholders agreement dated 31.05.2007, the Petitioner herein is entitled to various special rights in the management of the affairs of the 1st Respondent Company, which are as follows:-

- i. Appointment of the Chairman;
- ii. The right to appoint 3 out of 5 directors; and
- iii. Casting vote for any and all decisions of the Board of Directors.

8. The Petitioner submits that being a foreign investor and having only one nominee director on the board of the 1st Respondent Company, it was thought expedient that the 5th Respondent herein be appointed as the Managing Director of the 1st Respondent for the period of 5 years. His appointment was made at the Board Meeting of the 1st Respondent dated 30.04.2008 held at Belgium. In the said Board Resolution dated 30.04.2008, all the privileged, duties and various fiduciary responsibilities of the office of the Managing Director are set out in details.

9. The Petitioner would contend that in complete violation of the duties and responsibilities, the 5th Respondent indulged in the acts which have resulted in the oppression of the Petitioner and also mismanagement of the affairs of the 1st Respondent Company. The noteworthy alleged acts of oppression and mismanagement complained of are summarised as follows:-

i) On 27.05.2010, the 5th Respondent illegally filed Form 32 with the RoC vide SR No. A86020427 appointing the 4th Respondent as a Director of the 1st Respondent Company. The said appointment was illegal because no board meeting as contemplated by the Articles of Association/the Shareholders Agreement was held, the concurrence of the Petitioner or its nominee Director was not sought for the appointment of the 4th Respondent as a Director of the 1st Respondent. A perusal of Form 32 reveals that the alleged board resolution No.7 confirming the appointment of 4th Respondent

was passed in Board Meeting purportedly held on 16.09.2009. The Petitioner was neither a party to the said board meeting nor any notice for convening of such meeting was issued by the 5th Respondent as contemplated by the Articles of Association or the Shareholders Agreement.

ii) On 27.05.2010, the 5th Respondent illegally filed a Form 32 with RoC vide RS No. A86020492 removing the 6th Respondent as a Director of the 1st Respondent. The said removal was illegal because neither a board meeting as contemplated by the Articles of Association/ the Shareholders agreement was held. Neither the concurrence of the Petitioner nor its nominee Director was sought for the removal of the 6th Respondent as Director of the 1st Respondent Company. On a perusal of Form 32, it reveals that the resignation of the 6th Respondent was accepted vide Board Resolution No.3, for which the Board Meeting was purportedly held on 09.10.2009. Neither the Petitioner was party to the said Board Meeting nor

did the 6th Respondent attend the same. There was no notice issued by the 5th Respondent convening such Board Meeting as contemplated by the Articles of Association or the Shareholders Agreement. Further in the Form 32 filed by the 5th Respondent, no resignation letter of the 6th Respondent has been enclosed or attached.

iii. It is alleged that the 5th Respondent has made filing on 29.05.2010, vide SR No. A86140043 that reveals that 11498 shares have been allotted at par to the 2nd Respondent on 22.08.2008, and on the same date, 50,000 shares have been allotted to the 3rd Respondent at par, for which no Resolutions as contemplated under the Articles of Association or the Shareholders Agreement have been passed by the 5th Respondent. It is further alleged that, till date, neither the Petitioner nor the 2nd Respondent has seen/received the shares allegedly issued to them on 25.12.2007 and 22.03.2008, and the

purported Board Meeting held on 25.12.2007 is Christmas day which was a national holiday.

iv. It is alleged that the 5th Respondent filed a return on 30.05.2010 vide SR No. A86156072, wherein the 5th, 7th, 8th and 9th Respondents were issued 100 shares each at par amounting to Rs.40,000/-, for which no valid Resolution has been passed by the 5th Respondent. Thus, the shares have been issued to 5th, 7th, 8th and 9th Respondents by the 5th Respondent, without compliance with the provisions of law including the Articles of Association and the Shareholders Agreement.

v. It is alleged that since the 5th Respondent took over as the Managing Director of the 1st Respondent Company on 30.04.2008, the 1st Respondent Company has completely been mismanaged by the 5th Respondent and he has not even finalised accounts for the completed financial years . Even the accounts for the year


ending 31.03.2008 was filed with the RoC only on 02.06.2010 vide SR No. P48025100. The same has been filed without an AGM as no notice for the same has even been issued. The same is under challenge in the present Petition.

vi. It is alleged that on 02.06.2010 two Form 2's were filed by the 5th Respondent for issue of 19927 shares of the 1st Respondent at Rs.400/- i.e. at a premium of Rs.300/- per share and another block of 32953 shares at Rs.400/- per share. In the said Form-2, it has not even been stated as to whom the said shares have been issued, for which no valid Resolution was passed as contemplated under the provisions of the Companies Act, the Articles of Association and the Shareholders Agreement.

vii. It is alleged that on 02.06.2010 a Form 18 was filed that indicates change of the Registered Office of the 1st Respondent Company with effect from 08.05.2010 from No.22, Sadasivam Street,

Gopalapuram, Chennai, 600 086 to No.6/317, Raja Street, L.P. Nagar, Kottivakkam, Chennai-600 041. The illegal shifting of the Registered Office of the 1st Respondent Company is also under challenge for which no valid Resolution has been passed.

viii. It is alleged that on 06.06.2010, the 5th Respondent carried out his most egregious act of oppressing the Petitioner, when he filed a Form 23 vide SR No. A86554904, changing completely the Memorandum and Articles of Association of the 1st Respondent Company, by which all the rights of the Petitioner as given under the Shareholders Agreement were completely taken away by the act of the Respondent No.5.

ix. It is also alleged that even though the Petitioner held EoGM on 26.06.2010 at No.22, Sadasivam Street, Gopalapuram, Chennai, 600 086, no further action was taken to implement the decisions taken and no subsequent filing was 

done. Having stated as above, the Petitioner prayed for grant of the following reliefs:-

a. Declare that acts of 2nd, 3rd, 5th, 7th, 8th and 9th Respondents as oppressive to the shareholders of the company in general and the petitioner in particular and constitute acts of mismanagement;

b. Reconstitute the Board of Directors of the 1st Respondent company;

c. Set aside any and/all actions taken by the 5th Respondent in violation of the unamended Memorandum and Articles of Association of the 1st Respondent and more particularly described in para 6 of this Petition;

d. Set aside all actions taken by the 5th Respondent and the filing done by the 5th Respondent before the RoC and more particularly:-

1. Filing Form 32 with the RoC on 27.05.2010 vide SR No.86020427 appointing the 4th Respondent as a director of the 1st Respondent.

2. Declare that the board meeting and resolutions passed in the Board Meeting dated 16.09.2009 as null and void.

3. Filing Form 32 with the RoC on 27.05.2010 vide SR No.86020492 removing the 6th Respondent as director.

4. Filing Form 2 with the RoC on 31.05.2010 vide SR No.86140043, allotting 11498 shares to the 2nd Respondents and 5000 shares to the 3rd Respondent.

5. Filing Form 2 with the RoC on 30.05.2010 vide SR No. A86156072 allotting 100 shares to the 5th, 7th 8th and 9th Respondents.

6. Filing of Form 23AC for the year ended 31.03.2008 with the RoC on 02.06.2010 vide SR No. P 48025100.

7. Filing of Form 18 with the RoC on 02.06.2010 for change of registered office of the 1st Respondent.

8. Filing of Form 23 with the RoC on 06.06.2010 vide SR No.A86554904 amending the Memorandum and Articles of Association of the 1st Respondent.

e. Declare that the 4th and 5th Respondents are unfit to function as Directors of the 1st Respondent and remove the 4th and 5th Respondents from Directorship of the 1st Respondent;

f. Permanently restrain 2nd, 3rd, 5th , 7th , 8th and 9th Respondents from in any manner interfering in the affairs of the First Respondent Company;

g. Permanently injunct 2nd, 3rd, 5th , 7th, 8th and 9th Respondents, their men, agents, servant, other group of companies and any other person from in any manner dealing with

the assets/ customers of the 1st Respondent Company;

h. Direct the 4th and 5th Respondents to handover all documents, books of accounts, statutory records, company property and all other documents necessary for the running of the 1st Respondent to the Petitioner;


i. Restore the share holding pattern of the 1st Respondent as on 31.05.2007;

j. Grant such further or other reliefs including orders as to costs as this Tribunal may deem fit and proper in the circumstances of the case and render justice.

10. The Counter has been filed on behalf of Respondent No.1 and Respondent No.5 to the Company Petition. In the Counter, all the allegations contained in the Company Petition have been denied and it has been asserted that the Petitioner has approached this Bench with unclean hands as he has manipulated and withheld several material facts. It has been explained that the first Respondent Company was to establish a "Multiplication Center" (for short MC) for the Government of India which the first Respondent Company has not been able to achieve till

date purely by reason of the defaults of the Petitioner alone.

11. It is also contended by the answering Respondents that the nominee of the Petitioner Mr. Flor Indigne who was Chairman of the first Respondent Company is well aware of all the actions that the Petitioner is now complaining of. It is denied that the registered office of the Company has been illegally shifted. The contention of the Petitioner that he is holding 75% of shares of the 1st Respondent Company is denied. But, it has been admitted that the Petitioner is holding 70.96% of the total issued, subscribed and paid-up share capital of the 1st Respondent Company.

12. The 5th Respondent claims to be a person of high credentials due to which the Petitioner and the 2nd Respondent approached him with a view to start some business and the 5th Respondent accepted such proposal with the hope that the Petitioner and the 2nd 

Respondent will comply with their obligations which later on proved wrong.

13. The Petitioner, 2nd Respondent and 3rd Respondent entered into a Shareholders Agreement dated 31.05.2007 in relation to the affairs of the 1st Respondent Company and the scope of business under Clause 2 of the Shareholders Agreement was that the 1st Respondent Company had to establish 'Multiplication Centre' contemplated under the project with 'National Fisheries Development Board' (NFDB) for the local production of high quality post-larval seeds of P.Monodon (SPF and improved breeds). It has further been stated that the Petitioner's subsidiary namely Moano Technologies LLC, Hawaii (Moana-Hawaii) was required to supply parent stock on the continual basis to the 1st Respondent Company to operate the 'Multiplication Centre'.

14. The answering Respondents have admitted that though the Shareholders Agreement contained several

clauses governing the administration and the business of the Company, most of such clauses are now being relied on by the Petitioner have been given an express and complete go-by by the explicit conduct of the parties, especially the Petitioner and the 2nd Respondent who chose to run the Company in a completely informal manner. The answering Respondents have contended that the Shareholders Agreement was entered into in Bangkok and the same had not been stamped in accordance with the Indian Stamp Act, therefore cannot be relied upon in the present proceedings.

15. The answering Respondents given para-wise reply to the Company Petition. In reply to the contents of the petition, the answering Respondents have stated that the 2nd Respondent to whom 11498 shares were issued and allotted on 22.03.2008 under the Agreement, sought to be transferred to the Petitioner. But share transfer deeds were not provided. Therefore, such transfer has not been effected by the 5th

Respondent. Based on which the Petitioner has claimed that it holds 75% of the Paid-up capital of the 1st Respondent Company. It has also been highlighted that under Clause 4.2.3 of the Agreement, the 2nd Respondent and 3rd Respondent were required to arrange for a bank loan for the purpose of the 1st Respondent Company but the 2nd Respondent did not take any step to mobilise its part of funds whereas the 3rd Respondent has brought in the loan of a sum of \$ 450,000. The answering Respondents alleged that the Shareholders Agreement has not been complied with by the Petitioner under which the Petitioner was duty bound to perform certain acts which it failed to do. For these reasons, the answering Respondents alleged that the Company was run in a very informal manner by all concerned right from the date of the Shareholders Agreement, as the nominee of the Petitioner who was residing outside India, would attend only those meetings which were convenient to him and did not participate in all Board Meetings due to which the 5th Respondent was appointed as Managing Director of the

1st Respondent Company and it was due to the efforts of the 5th Respondent that agreement dated 20.03.2008 was signed between the Petitioner and the Company on one side and the NFDB on the other side, with a purpose of establishing the project relating to designing, construction, supervision, operation and maintenance of a 'Multiplication Centre' for the production of three billion high quality seed of P.Monodon per annum. Thus, to establish a 'Multiplication Centre' for local production and supply of high quality seeds of P.Monodon.

16. It has been stated in the counter that, the Petitioner demanded a fee towards its services and the same was fixed at USD \$ 600,000 and the Petitioner had in fact received a sum of USD \$ 540,000 from the NFDB as advance, but the Petitioner failed to perform the part of its obligation as per the contract signed on 20.03.2008.

17. It has been averred by the Respondents in the reply that, in the given circumstances, it became commercially undesirable and impractical to carry forward the Project under such circumstances. Therefore, the 5th Respondent being the Managing Director of the 1st Respondent Company did not sign the consent letter, committing to enhanced rentals as was required by NFDB, which was done purely in the interest of the 1st Respondent Company.

18. The answering Respondents have stated that in order to resolve the internal issues among JV Partners, a meeting was held at Visakhapatnam on 24.07.2009, wherein the exit of the 3rd Respondent from the 1st Respondent Company was proposed. The 3rd Respondent was agreeable to such proposal and consequently the negotiations were held between the 5th Respondent and the President of the Petitioner in which the consideration payable by the Petitioner to the 3rd Respondent was crystallised. "In Principle" Agreement was executed on 20.08.2009 under which

the entire shareholding of the 3rd Respondent in the 1st Respondent Company was to be transferred to the Petitioner for a consideration of a sum of USD 818,000, besides the salary of the 5th Respondent @ USD 150,000 per annum from August 2009 and a milestone payment of a like amount and interest was also to be paid on the amounts till the full payment is made. It was further agreed that the 5th Respondent would continue as the Managing Director of the 1st Respondent Company till all the outstanding payments and transfer of shares of the 3rd Respondent in favour of the Petitioner was completed.

19. The answering Respondents submit that the 1st Respondent Company has issued and allotted 50,000 shares as a single allotment to the 3rd Respondent on 22.03.2008, which the Petitioner agreed to purchase. Therefore, there was no illegality in making such allotments to 3rd Respondent.

20. The Respondents state that in this regard, the Petitioner filed a Suit under O.S.No.376/2010 before


the City Civil Court, Hyderabad, seeking a declaration to the effect that the said agreement dated 20.08.2009 is invalid, *null and void*.

21. It has been stated in the reply that in relation to the appointment of 4th Respondent as an Additional Director of the 1st Respondent Company, a Board Meeting dated 16.09.2009 was convened which was attended by the 5th and 6th Respondents. But, the Petitioner's nominee was not present in the said meeting as he was not interested to attend the same. The answering Respondents contended that the allegations that there was no Board Meeting on 16.09.2009 to appoint the 4th Respondent, [which is without the concurrence of the Petitioner or its nominee] is completely false and baseless.

22. It is also admitted in the reply that the resignation of the 6th Respondent was accepted which arose by the reason that the Petitioner during April, 2008 acquired 15% of the then existing capital of the Company from 2nd Respondent that reduced the 2nd Respondent's

holdings to a minuscule minority. It was on such basis, the 6th Respondent decided to resign as Director of the 1st Respondent Company and the Board accepted the resignation of the 6th Respondent, which is not an act of oppression against the Petitioner.

23. In reply to para 7(c) of the Petition, the answering Respondents have stated that the mention of the Board Meeting dated 22.08.2008 is wrongly made, which was actually held on 22.03.2008, wherein 50,000 shares were issued and allotted to the 3rd Respondent and 11498 shares were issued and allotted to the 2nd Respondent. The Respondents further averred that 72,510 shares were issued and allotted to the Petitioner on 25.12.2007, which the Petitioner is now denying surprisingly.

24. In relation to the para 7(d), the answering Respondents have stated that 100 shares each were allotted to 5th, 7th, 8th and 9th Respondents at a Board Meeting dated 30.04.2008, which was attended by the 5th Respondent and the nominee Director of the 

Petitioner. The Respondent Nos. 5, 7, 8 and 9 belonging to the 3rd Respondent's group and the shares allotted to these persons are reckonable as the proportionate shareholding of 3rd Respondent under the Agreement, cannot said to be detriment to the interest of the Petitioner.

25. In reply to para 7(e), the answering Respondents have vehemently denied that the 5th Respondent has mismanaged the affairs of the 1st Respondent Company. It is also denied that there are any diversions of either assets or business of the 1st Respondent Company or that the 5th Respondent has been running Company arbitrarily. However, it has been admitted by the answering Respondents that though some of the actions may have been performed by the parties not in accordance with the Shareholders Agreement, all of such other actions were done with the consent of the parties, and none of the informal actions taken by all concerned are in the nature of either acts of oppression or mismanagement, as contended by the Petitioner.

26. It has also been admitted by the answering Respondents that the shareholders of the 1st Respondent Company passed necessary Resolutions at EoGM dated 08.08.2010 for increasing the authorised capital of the 1st Respondent Company from Rs.2,50,00,000/- to Rs.4,25,00,000/-, and the Company was therefore, required to file a Form 23 reflecting such change in the Articles of Associations of the 1st Respondent Company . However, the Form 23 dated 06.06.2010 was filed inadvertently out of a clerical error as a wrong file was uploaded along with such Form 23.

27. The answering Respondents alleged that the Petitioner has filed the present Petition with a view to avoid the implementation of the “In Principle” Agreement dated 20.08.2009. However, it is pertinent to record that the answering Respondents stated at the end of their reply that the Respondent Nos. 3 and 5 do not wish to be an ever tide down to be servants of the

Petitioner in looking after the 1st Respondent Company and prayed to dismiss the Petition with exemplary costs.

28. The Petitioner has filed a Rejoinder, wherein all the allegations contained in the Counter Statement filed by the Respondent Nos. 1 and 5 have been denied except that which are borne out from the record.

29. It has been stated in the Rejoinder that the 5th Respondent was appointed as the Managing Director of the 1st Respondent Company for the purpose that he will set up 'Multiplication Centre' and managed the affairs of the 1st Respondent Company, the duty of the Petitioner was to supply the SPF Post Larval stock, and provide necessary technical assistance required to be given to the 1st Respondent Company, in order to enable the 1st Respondent Company to set up Plant for 'Multiplication Centre'. It has further been stated in the Rejoinder that, in fact, the duty of the 3rd Respondent was to assist in the incorporation and

setting up of the 1st Respondent Company and obtaining the necessary approvals and permits from the statutory authorities to enable the 1st Respondent Company to set up the said Plant for the 'Multiplication Centre'. But, the 5th Respondent has not taken any steps to implement the project. However, he (5th Respondent) has remained engaging in shifting the Registered Office of the 1st Respondent Company, increasing the authorised capital illegally, making allotments of shares without following the procedure provided under the Articles of Association or Shareholders Agreement, etc.

30. The Petitioner further submitted in the Rejoinder that, the Respondent No.5 has not even issued share certificates to the Petitioner till date, and had never given any information for conducting the Board Meetings for allotment of shares, because of which the Petitioner was not having any knowledge about the acts of fraud as well as the acts of oppression and mismanagement being conducted by the Respondent

No.5, and as soon as the Petitioner became aware of the *mala fide* activities, and systematic hijack of the 1st Respondent Company, the Petitioner started taking corrective measures. The Petitioner denied the claim of the 5th Respondent that he was instrumental in getting the support of NFDB for the proposed breeding of program for the SPF Monodon. It has also been reiterated by the Petitioner in the Rejoinder that, to the best of the knowledge of the Petitioner, the 5th Respondent has been siphoning off the business of Shrimp Production to his other companies for which the Petitioner reserves its rights to initiate appropriate legal proceedings. It has also been alleged that, the establishment of the 'Multiplication Centre' was the sole responsibility of NFDB and it is the NFDB which has not started 'Multiplication Centre', but the Petitioner has fulfilled its contractual obligations as far as the agreement dated 20.03.2008 is concerned that was signed with the NFDB.

31. It has been contended by the Petitioner in the Rejoinder that the Respondent No. 5 is guilty of falsifying the shareholding pattern as per his convenience which is a clear act of an oppression and mismanagement. The Petitioner explains that clause 3.4 of the Shareholdings Agreement, clearly demonstrates that it was desirable that the shareholding pattern should not be changed for a period of three years, but, there was no absolute prohibition.

32. The objection raised by the answering Respondents with regard to the non-stamping of the agreement is controverted by the Petitioner stating that the non-stamping is a curable defect, if any.

33. The Petitioner, in the Rejoinder, has very clearly stated that PPL's from Hawaii were shipped to India on 8 different occasions (350,333 animals against no compensation whatsoever) under the supervisions of the Petitioner's technicians and the same was executed by several high skilled technicians. Hence, there has

been no failure on the part of the Petitioner to perform its contractual obligations. It has been alleged that the 5th Respondent did not allow the office bearers of the Petitioner to participate in the management of the 1st Respondent Company, as no notice, no intimation with regard to any of the meeting or the business transactions were ever informed to the members of the Petitioner Company.


34. It has been alleged by the Petitioner in the Rejoinder that various documents were forged, fabricated by the Respondent No.5, and the fact of not signing the consent letter clearly shows the non-performance of obligations on the part of the 5th Respondent. It has been specifically mentioned by the Petitioner in the Rejoinder that the Minutes of Board Meetings dated 30.04.2008, 16.09.2009 and AGMs dated 01.09.2006, 25.04.2007, are all fabricated and no proof of dispatch of notices have been demonstrated.

35. It has been averred in the Rejoinder that the Respondent No.5 wishes to argue that a notice of General Meeting to be held in Chennai was sent by UPC on 23.09.2009 to the majority shareholders in Hong Kong. Even no UPC proof has been attached for so called Annual General Meeting on 30.09.2010. In short, the Petitioner in the Rejoinder held the Respondent No.5 as guilty of various acts of oppression and mismanagement that resulted in the down fall of the 1st Respondent Company.

36. In Rejoinder, it has been stated that on one hand the Respondent No.5 is submitting that the Respondent No.1 Company should be wound up; while on the other hand offering to transfer its shareholding for an amount of Rs.1,51,26,000, held in the 1st Respondent Company. While concluding the Rejoinder, the Petitioner prayed that the Petition may be allowed.

37. From the perusal of the pleadings and the record placed on the file, it is quite clear that the 1st Respondent Company was incorporated to carry on the business of hatchery and grow out Penaeid Shrimps through farming, etc. But, the scope of business under Clause 2 of the Shareholders Agreement dated 31.05.2007 was that the 1st Respondent Company was to operate the required, "Multiplication Centre" contemplated under the project with 'NFDB' for the local production of high quality post-larval seeds of P.Monodon (SPF and improved breeds). The Petitioner's subsidiary viz., M/s. Moana Technologies, LLC, Hawaii, was required to supply parent stock on a continual basis to the 1st Respondent Company to operate the "Multiplication Centre", for which an agreement dated 20th March, 2008 was signed between the Petitioner and the 1st Respondent Company on one side and NFDB on the other side. As per this Agreement, the 'NFDB' has given a sum of USD \$ 540,000 as an advance to the Petitioner. The Petitioner has provided the drawing and designs and also shipped

PPL's from Hawaii to India on eight different occasions (350,333 animals) under the supervisions of the Petitioner's Technicians and the same was executed by several high skilled technicians, but due to the mismanagement of 1st Respondent Company by 5th Respondent, the setting up of the "Multiplication Centre" could not see the light of the day, due to which the Petitioner viz., M/s. Moana Hong Kong Ltd., vide its letter dated 13th March, 2017 has offered to refund the sum of USD \$ 540,000, which was advanced to the Petitioner by NFDB, with 12% interest with effect from March, 2008 till April 15th, 2017 on the condition to terminate the Agreement dated 20th March, 2008 and return the entire drawing and designs to 'Vaishnavi Aquatec'. The said proposal has gone through, as the payment has been made by the Petitioner to NFDB and the Agreement with NFDB has been terminated. The Shareholders Agreement dated 31.05.2007 is also in shambles as the answering Respondents have stated in para No.18 of their reply that the Agreement had not been stamped in accordance with the Indian Stamp



Act-1899, and the Petitioner cannot rely on such unstamped document. In other words, the Respondents do not recognise the binding effect of the Agreement. The Petitioner also admits in para 19(b) of its Rejoinder that Clause 3.4 clearly demonstrates that it was desirable that shareholding pattern should not be changed for a period of 3 years, but there was no absolute prohibition. This indicates that both the Petitioner and the Respondents did not honour the Shareholders Agreement in letter and spirit.

38. The Company Law Board, Chennai, vide its Order dated 20.09.2011 appointed the then Bench Officer viz., Mr. C.S. Govindarajan to verify and make an inventory of all the statutory records of the 1st Respondent Company. On 05.11.2011, the Bench Officer in the presence of the Counsels for the Petitioner and Respondents, completed the assignment and submitted his report, wherein it has been mentioned that statutory record was not found in order, as was mandated under Sections 143, 193, 300 and 301 of the Companies Act, 1956 and the Rules

made thereunder. The report clearly evidences that the statutory compliances have not been made.

39. Besides the above, the financials of the 1st Respondent Company have not been maintained, which suggests that the same have been siphoned off, as the Petitioner alone has invested a sum more than one Million USD \$. The Managing Director, who is Respondent No.5, is responsible along with other Respondents (except Respondent Nos. 2 and 6) for the acts of oppression and mismanagement of the 1st Respondent Company. However, at present there is no business and no assets of the 1st Respondent Company. The 1st Respondent is completely a shell Company, which has been admitted by the Counsels for the Petitioner and Respondents during the arguments. Therefore, the acts complained of are oppressive in nature and amounts to mis-management of the affairs of the 1st Respondent Company. To support our view, we may refer to the case of **S. Vardarajan Vs. Udhyem Leasings and Investment Ltd.**, (2005) 125 Com. Cases 853, in this case, it was

held that the Directors are in a fiduciary position *vis-à-vis* the company, they must exercise their powers with utmost good faith for the benefit as well as interest of the company. But, in the case in hand, the powers have not been exercised with good faith and are not in the interest of the 1st Respondent Company. Further, in **Manmohan Singh Koli Vs. Venture India Properties Private Limited**, 2005, 123 Comp. Case 198 CLB, it was held that a meeting of the Board of Directors held without sending notice to the Director was invalid and the resolutions passed therein are also not valid. Therefore, the resolutions passed by the Respondent No. 5 without sending due notices to the Directors are held invalid. This view is also supported by the ruling 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 the Addl. P.B. CLB Chennai, has held that when the mandatory requirement of giving notice is not met, the resolution passed in the meeting of the Board becomes invalid.

40. In the light of the facts and circumstances stated above, we form the opinion that the 1st Respondent Company is liable to be wound up, on just and equitable grounds. Accordingly, we are constrained to pass the order as follows:-

ORDER

i. We, in exercise of powers conferred under Section 273 r/w Section 271 (e) of the Companies Act, 2013, Order for winding up of the 1st Respondent Company and appoint Mr. V. Mahesh, [*Insolvency Professional registered under the Insolvency and Bankruptcy Code, 2016 (IBBI/IPA-002/IP-00215/2016-17/1930), residing at 39/19, Aspen Court, 3rd Floor, 6th Main Road, R. A. Puram, Chennai – 600 017; Email: maheshvenki@gmail.com , Mobile No.9600034643*] as Official Liquidator for conduct of the proceeding for the winding up of the 1st Respondent Company in accordance with the provisions of the Companies Act, 2013, who within seven days from the date of his appointment shall file declaration disclosing of interest or lack of independence. He is at liberty to fix his

remunerations as per the practice in vogue keeping in view bulk of the work to be performed and the size of the Company.

ii. The Official Liquidator is directed to file an Application within three weeks from the date of his appointment before this Tribunal for constitution of the winding up committee as provided under Section 277 of the Companies Act, 2013.

iii. The Official Liquidator shall submit a report to this Tribunal within sixty days as envisaged under the provisions of Section 281 of the Companies Act, 2013.

iv. It is made clear that from the date of the Order of the winding up of the 1st Respondent Company, and the appointment of the Official Liquidator, no Suit or other legal proceeding shall be commenced or if pending at the date of the winding up order, shall be proceeded with, by or against the 1st Respondent Company, except with the leave of the Tribunal.

v. The winding up Order shall be deemed to have a notice of discharge to the Officers, employees and workmen of the 1st Respondent Company.

vi. The Promoters, Directors, Officers and Employees, who are or have been in employment of the 1st Respondent Company or acting or associated with the 1st Respondent Company shall extend full co-operation to the Official Liquidator in discharge of his functions and duties.

vii. A Copy of this Order shall be sent to the concerned RoC and Office of the Official Liquidator, within seven days from the date of passing this Order.

Accordingly, TCP No.77/2016 stands disposed of.


[K.ANANTHA PADMANABHA SWAMY]
MEMBER (JUDICIAL)

P.ATHISTAMANI


[CH. MOHD. SHARIEF TARIQ]
MEMBER (JUDICIAL)