

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP No. 70/2016
(CP No. 37 of 2011)

Sections 397 and 398 of the Companies Act, 1956

In the matter of

Mr. M.S.D. Chandrasekar Raja

Vs.

M/s. Jayabharath Textiles (P) Ltd. & Anr.

Order delivered on 27th of July, 2017

CORAM :

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

For the Petitioner(s)
For the 2nd Respondent

: Counsel Mr. Thriyambak Kannan
: Counsel Mr. T. V. P. Sai Vihari and Mr. Kumar Pal Chopra

ORDER

Per :CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration is the Petition filed under Sections 397 & 398 of the Companies Act 1956 before erstwhile Company Law Board alleging various acts of oppression and mismanagement in the affairs of M/s. Jayabharat Textiles Pvt Ltd. (for short, the Company).

2. The First Respondent Company was registered as a Private Limited Company by shares in the year 1990

to carry on the business of producing and selling yarn and other textiles. The Petitioner and 2nd Respondent are the only equity shareholders of the company holding 50% each (1, 25,000 Shares) of the paid up capital of the Company. Further, four other persons who are closely related to the Petitioner and Respondent No.2 are the preference shareholders and they have been allotted each 25 numbers of 12% redeemable Non-cumulative preference shares of Rs.10 each on 16/5/1990. The Petitioner is the father and 2nd Respondent is the son. The Petitioner was the Managing Director of the Company from its inception and during AGM held in the year 2010 the Petitioner and the 2nd Respondent were re-appointed as directors of the Company.

3. When the company was unable to realise its full potential, the Petitioner being the Managing Director in a bid to enhance the production of the company was considering various options, however there were difference of opinion that cropped up between the Petitioner and the Respondent No.2.

4. In view of the disputes between the parties and also due to downward trend in the textile market, the Company could not function in full capacity and there was net loss of Rs.73.44 Lakhs, and in these circumstances, the manufacturing activities were closed in the Company. Later, with a view to put the machinery of the company in use and also in the interest of the Company, the Petitioner wrote a letter dated 16.9.2005 to the 2nd Respondent seeking the suggestion of the 2nd Respondent to lease out the mill. Alternatively, the Petitioner has floated another suggestion that the spinning machines could be put to use by using polyester fibre. But, there was no response to the above said letter of the Petitioner from the 2nd Respondent. The Petitioner had indicated in the said letter that if no response is received, necessary action would be taken in the interest of the Company.

5. Since there was no response from the 2nd Respondent, the Petitioner placed an order for supply of polyester fibre vide letter dated 9/11/2005 with

M/s. Indo Rama Synthetic (India) Ltd., for commencing the production of synthetic fibre yarn and advanced an amount of Rs.3,41,779/- to the said company. The 2nd Respondent having knowledge of acts and the steps taken by the Petitioner for running the company, feigning ignorance, addressed a letter dated 25/1/2006 with all untenable allegations against the Petitioner and also accusing the Petitioner that he had withdrawn money from the Company for personal use. The Company was also paying electricity bill to the tune of Rs.40,000 per month even without any production activity. Had the proposal of the Petitioner was accepted and implemented, there would have growth and income to the company. Further, the employees union have also addressed a letter to the management requesting to commence the activities of the Company.

6. The 2nd Respondent had also issued another letter dated 24.2.2006 wherein he had *inter-alia* reiterated that he had no knowledge of the transaction between the company and M/s. Indo Rama Synthetic (India) Ltd., and the Petitioner had wantonly kept him in dark.

In the said letter, the 2nd Respondent also stated that the Petitioner is no longer a Managing Director and his stake in the company is still not conclusive in view of a pending Civil Suit. The Petitioner, with a view to solve all the misconceptions, had arranged a meeting with M/s. Indo Rama Synthetics (India) Ltd., and the 2nd Respondent, and in this regard a letter dated 8.6.2016 was sent to the 2nd Respondent. However, the 2nd Respondent has refused to co-operate in any manner, therefore, all the affairs of the Company came to be standstill and losses were increased. Further, an amount of Rs.27,07,318/- was brought from M/s. *Shree Bharathi Cotton Mill* to meet the expenditure of the 1st Respondent Company. In the premises, the Petitioner prayed for grant of the reliefs as follows:-

- a. *Directing the Company to issue Share Certificates in respect of 1, 25,000 Equity Shares issued and allotted to the Petitioner and in respect of 100 preference shares issued by the Company.*
- b. *Directing that the 50% share in the land, building and machinery situated at No.113, T.P. Mills Road, Cotton Market, Post Box No. 117, Rajapalayam 626 117 be divided in such manner as may be determined by an expert appointed for this purpose and be vested in the second respondent or an entity nominated by him in this regard.*
- c. *Consequent thereto and in consideration of the foresaid transfer, to direct the Second Respondent to transfer his entire shareholding in the First Respondent Company to the Petitioner or to the person/s nominated by him for this purpose.*

- d. *In the event that this Hon'ble Board does not for any reason deem it fit to direct the Second Respondent to transfer his entire shareholding to the Petitioner, then further directions may be passed to transfer 30% interest in the undivided share of the Land and flat bearing No., South Bishop Wallers Avenue, CIT Colony, Mylapore, Chennai 600 014, belonging to First Respondent in favour of Shree Bhaarithi Cotton Mills Pvt Ltd, who is the owner of the remaining 70% interest in the undivided share of the said Land and Flat, in consideration of the sum of Rs. 27,07,318/- owed by the First Respondent Company to the said Shree Bhaarithi Cotton Mills Pvt Ltd.*
- e. *To declare the redemption of Preference shares as invalid.*
- f. *Pass such further orders as this Hon'ble Board may deem fit and proper to grant relief from the acts complained of.*

7. After causing appearance, the 2nd Respondent has not filed any counter to the Petition but he filed written submissions at the time of hearing the arguments and contended that there is no deadlock in the company and he had attended all the board meetings and general meetings, and willing to revive the company by taking active part in the management. It is mentioned that the dispute with the Petitioner is personal, and no way connected with the company and its affairs, and there is no oppression and mismanagement in the affairs of the company on his part. It is contended by 2nd Respondent that no board meeting was convened on 29.12.2008 and no resolution was passed for

issuance of any share certificates. According to the 2nd Respondent, he has filed Civil Suits challenging the settlement deed and gift deeds before City Civil Court in Srivilliputhur in the years 2005 and 2008 respectively and also challenged the allotment of shares to the Petitioner in the said Civil Suit.

8. *However, in the given facts and circumstances of the case the claims and contentions of respondent no 2 are not correct.* There is lack of confidence between the petitioner and respondent No 2 that has created the deadlock in the management of the affairs of the company. There are allegations and counter allegations but the fact remains that it is a fit case where a case has been made out on just and equitable grounds for winding up the company but the same would unfairly prejudice the petitioner as a shareholder.

9. It is further evident from record that the respondent No 2 refused to attend the board meetings and general meetings on some pretext or the other, and

had deliberately blocked and obstructed all the actions taken for the benefit and interest of the company. A board meeting was convened on 29.12.2008 wherein it was decided to fix the next board meeting on 20.01.2009 for the purpose of issuance of share certificate for equity and preference shareholders. The 2nd Respondent having attended the board meeting 29.12.2008, refused to sign in the attendance register on that day. Further, in a letter dated 12.01.2009, he claimed that no board meeting was convened on 29.12.2008 and the contention of the Petitioner was fictitious. Again, the Petitioner had sent a notice for a board meeting to be held on 23.1.2009, but the 2nd Respondent vide his letter dated 20.01.2009 made several untenable allegations, fraud and cheating against the Petitioner. He also expressed that he is not agreeable for any meeting to be held in the premises of M/s. Shri. Bharathi Cotton Mills and all meetings in future have to be held at the premises of the 1st Respondent Company. The Petitioner sent a notice for board meeting to be convened on 2.03.2009 at M/s.

Jayabharath Mills as requested by the 2nd Respondent. However, the 2nd Respondent, vide his telegram dated 2.3.2009, refused to attend the said meeting in view of his previous commitments and said that he needs 15 days prior notice, but there was no such requirement being specified in the Articles of Association. The Petitioner again fixed a meeting on 23.3.2009 by giving sufficient notice but the 2nd Respondent again refused to attend the meeting. In these circumstances and due to non-cooperation of the 2nd Respondent in convening the board meeting, the company was unable to issue share certificates to the equity shareholders and preference shareholders.

10. The Petitioner has issued a notice to 2nd Respondent for convening 20th AGM to be held on 30.08.2010 but the meeting was reschedule to 6.09.2010 as the Petitioner was unable to attend the said meeting. It has been mentioned that due to non-co-operation of the 2nd Respondent, the dividend to the preference shareholders was not declared so far and the preference shareholders addressed a letter to the

company on 26.08.2010 stating that they are entitled to vote on every resolution in any meeting of the Company and they would exercise such right as envisaged under Section 87 (2b) of the Companies Act 1956. The 2nd Respondent sought adjournment of the AGM to be held on 06.09.2010 with an intention that the preference shareholders can be prevented from exercising their voting rights. Further, the 2nd Respondent had issued another letter dated 03.09.2010 fixing a board meeting to be held on 16.09.2010 in the capacity of the director of the company and *inter-alia* fixed the declaration of dividend to the preference shareholders and redemption of preference shareholders as agenda for the meeting. The Petitioner knowing the intention of the 2nd Respondent convened the AGM on 06.09.2010 as the required quorum for the meeting was present. Wherein the regular item of business as per the agenda was taken up and was passed unanimously. The 2nd Respondent addressed a letter dated 08.09.2010 to the preference shareholders by taking an unilateral

decision that their preference shares have been redeemed, he had also attached a demand draft of Rs.250 towards redemption. Then, the preference shareholders informed to the company by way of letter dated 09.09.2010 that the redemption of their shares is invalid since the said item of business was not transacted in the AGM held on 06.09.2010, the Petitioner addressed a letter dated 14.09.2010 to 2nd Respondent stating that the unilateral action taken by him is invalid. It is mentioned that the unilateral action of the 2nd Respondent was not authorised by board and when the preference shareholders sent back the demand draft, 2nd Respondent had refused to accept the same. Later on, the preference shareholders sent the demand drafts to the Company.

11. The 2nd Respondent sent a letter dated 16.09.2010 and a telegram dated 17.09.2010 stating that the preference shares have been redeemed and the payments were also made to preference shareholders and asked the company to make necessary entries in the accounts of the company. In the letter dated

16.09.2010, 2nd Respondent said that he received only blank papers that is to say that he has not received letter dated 14.09.2010 from the Petitioner. Therefore, the Petitioner has sent another copy of the said letter dated 14.09.2010.

12. On the other hand, the 2nd Respondent has mentioned and challenged that the preference shares were issued on 16.05.1990 as envisaged under Section 80 (5A) of the companies Act 1956 and they would have been continued only up to 15/5/2000. The preferential shareholders are not entitled to attend the meetings and vote on any resolutions. Therefore, the preferential shareholders are not supposed to attend the AGM held on 06.09.2010 and the said General Meeting is invalid, null & void. Since the Petitioner has established the deadlock in the company the contention of the 2nd Respondent under Section 80 (5A) of the Companies Act, 1956, is an afterthought.

13. After the analysis made above, the petitioner *inter alia* established a case of oppression and mismanagement by establishing the followings:-

- i) Non co-operation of respondent no 2;
- ii) Non- issue of share certificates;
- iii) Redemption of preference shares by respondent no. 2 by adopting the procedure unknown to law; &
- iv) Total Dead lock in the affairs of the company.

14. In the above noted scenario it is quite clear that there are two equity shareholders, who are Directors; and in future any acrimony between them would come in the way of proper functioning of the company and would affect the smooth management of the affairs of the company. The parties admittedly are at logger heads. A civil suit is pending between them. Therefore, there requires a suitable solution so that the matter complained of is brought to an end.

15. In a similarly situated facts and circumstances, the Hon'ble Supreme Court of India in **M.S.D.C. Radharamanan Vs. M.S.D. Chandrasekara Raja**, reported in (2008) 143 com cases 97 (SC), has arrived at a conclusion that the ground of lack of mutual trust and confidence cannot be taken into consideration in isolation, and the same has to be considered having

regard to large number of other factors, the cumulative effect thereof would be extremely significant to arrive at one or other conclusion. It is necessary to mention here that in the above noted case, the then Company Law Board concluded that there has been dead lock in the affairs of the company and it was opined that it would be impossible for both the parties to pull up together as there was incompatibility between them, and the Respondent was directed to purchase the shares of the Petitioner failing which the Petitioner was directed to purchase the shares of the Respondent. The opinion formed by the then Company Law Board was upheld by the Hon'ble High Court and the Hon'ble Apex Court.

16. In another case titled **Sishu Ranjan Dutta Vs. Bola Nath House Ltd.**, reported in, 1983, 53 *comp cas* 883 (*cal*), the Hon'ble High Court of Calcutta in a similar set of the facts and circumstances directed that the assets of the company after payment of all liabilities, be divided equally between the two groups in order to put an end to the matter complained of.

17. We may also refer another case titled **B.V. Reddy Vs. Legend Technologies (India) Pvt. Ltd.**, reported in *(2009) 147 com cases 81 (CLB)*, wherein, based on the similar set of facts and circumstances, the then Company Law Board found that it has become necessary to throw upon the exist process to both of the parties under the supervision of the Bench by giving equal opportunity to both of them to acquire the shares of each other which would bring to end the matter complained of.

18. In the light of the facts and circumstances and the legal positions stated above, it is inevitable to conclude that the Petitioner and the 2nd Respondent cannot run the management and the day-to-day affairs of the 1st Respondent company without parting the ways by buying the shares of each other for which the first opportunity is provided to the Petitioner failing which the 2nd Respondent shall purchase the shares of the Petitioner. To determine a fair and true value of the shares of the 1st Respondent Company, there

requires an expert person. Therefore, the parties are directed to mutually suggest the name of an independent Chartered Accountant, failing which, the parties shall suggest two names each to this Bench for appointment of an independent Chartered Accountant to carry the assignment. Interim order, if any, stands vacated. The Registry is directed to issue notice to both the parties for the above purpose. Put up on 10.08.2017.

(K. ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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