

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP No.234 of 2016
(C.P.No.100 of 2011)

Sections 111, 397, 398, 402 and 406 read with
Schedule XI of the Companies Act, 1956

In the matter of

Ayoli Abdullah

Vs.

M/s. Meezan Realtors Private Ltd & 3 Others

Order delivered on 7th of August, 2017

CORAM :

K.Anantha Padmanabha Swamy, Member (Judicial)

Ch. Mohd. Sharief Tariq, Member (Judicial)

For Petitioner(s) : Dr.K.S.Ravichandran, PCS and S.Manjula Devi,
Counsel

For Respondent(s) : Mr. V.K.Rajasekhar, Counsel

ORDER

Per: Ch. Mohd. Sharief Tariq, Member (Judicial)

1. Under adjudication is CP No.100 of 2011 that came to be filed before the Company Law Board, Chennai, under Sections 111, 397, 398, 402, 406 read with Schedule XI and other relevant provisions of the Companies Act, 1956. The same has been transferred to this Bench and renumbered as TCP 234 of 2016.

2. The Petitioner is Mr.Ayoli Abdulla and there are four Respondents in the Company Petition. The 1st Respondent is M/s. Meezon Realtors Private Limited, a company incorporated on 25th August 2003 with Registrar of Companies at Calicut (Kerala) having its registered office at No.5/34, 2nd level, Galleria Trade Centre, Puthiyara P.O., Mavoor Road, Calicut, Kerala-673004.

3. The authorised capital of the company is Rs.1,00,000/- divided into 1000 equity shares of Rs.100/- each. The main object of the company is to carry on business of construction, building, remodelling, repairing and dealing in building houses, cottages, properties, estates, resorts and commercial complexes. The Petitioner and one Mr.Salauddin Nalakath are the subscriber to the Memorandum of Association of the 1st Respondent company and were appointed as the first Directors under Article 28 of the Articles of Association of the company. The Petitioner holds 500 equity shares of Rs.100/- equivalent to 50% of the issued capital of the 1st Respondent company.

4. In precise, the Petitioner's case is that, on 27.02.2011, the 4th Respondent forced him along with few other persons, with threat to life and bodily harm to transfer his shares held by him in the 1st Respondent company to and in favour of the 4th Respondent. The share transfer form was first signed by 2nd Respondent as the first holder and the Petitioner was forced to sign it as second holder. The Petitioner contended that the transfer deeds got executed through him is invalid as the date of presentation of the said transfer deeds was on 16.11.2010 and the same has not been revalidated before its acceptance in the purported Board Meeting. He explains that on 13.12.2011, a friend informed him that the 4th Respondent has called him to state that the Petitioner is no more the Director of the 1st Respondent company, and immediately thereafter, the Petitioner has caused inspection of the record of the 1st Respondent company from the portal of the MCA. Then, the Petitioner came to know about the malicious and fraudulent acts of the Respondents 2 to 4, and in order to bring the malicious

and oppressive acts of the Respondents to notice, has approached this Bench, as he has found unauthorised and incorrect filing made by the Respondents without the knowledge of the Petitioner. He further contended that with *mala fide* intention of usurping the management of the 1st Respondent company, Form-32 has been filed by the Respondents, indicating the appointment of the Respondents 3 and 4 as Director and Managing Director respectively in the 1st Respondent company pursuant to the purported Board Meeting held on 25.11.2011, that too, without any notice to the Petitioner and the above acts of Respondents 2 to 4 were with an intention to side line the Petitioner and to take control over the management of the 1st Respondent company. The Petitioner points out that he was surprised to note that his name is excluded from the list of shareholders mentioned in Schedule-V annexed to the Annual Returns filed by the 1st Respondent company for the financial year ending 31st March 2011. He states that the said appointment, cessation and transfer of equity shares are all

improper, *void ab initio* for want of quorum as the purported Board Meetings said to have been held on 25th September, 2011 for the appointment of the Respondents 3 and 4 as Directors, and the purported Board Meeting said to have held on 15th November, 2011 for changing the designation of the Petitioner and recording the purported transfer of the equity shares of the Petitioner to the 4th Respondent have in fact never been convened. As such, the acts of Respondents 2 to 4 are stated to be harsh, burdensome and illegal by which the Petitioner is deprived of his legitimate rights being the shareholder and Managing Director of the 1st Respondent company.

5. In the premises, he prays for reliefs as follows :-

- i) *To declare that the acts set out and complained of herein are acts of mismanagement and oppressive of the petitioner;*
- ii) *Set aside the transfers purported to have been made to the 4th Respondent by the petitioner and the 2nd Respondent and the subsequent transfers made by the 4th Respondent to 2nd and*

3rd Respondents and thereby direct rectification of register of members;

iii) Declare as void all the documents that have been filed under the digital signature of the 2nd Respondent;

iv) Declare that the removal of the petitioner from the post of Managing Director as invalid and null and void;

v) Direct that the action be taken against Respondents 2 to 4 pursuant to the provisions of Section 628 of the Companies Act, 1956;

vi) Examine the conduct of 2nd to 4th Respondents in terms of Sections 539 to 544 r/w Section 406 and with Schedule-XI of the Companies Act, 1956 and pass appropriate orders in respect of the same;

vii) Order the 2nd to 4th Respondents to pay the petitioner the cost of this petition; and

viii) Pass such other order that the Bench deems fit.

6. The Respondents have filed the counter denying all the allegations which have been levelled by the

Petitioner in his Petition and contended that the Petitioner has transferred his entire shareholding to the extent of 1000 shares by executing share transfer form on 27.04.2011 to and in favour of 4th Respondent. The Respondents would further contend that the allegations pertaining to mismanagement and indulgence in acts of oppression and mismanagement as levelled by the Petitioner are imaginary and without any factual basis. It has been clarified that the unsubscribed 500 equity shares of other promoter viz. Salauddin Nalakath have been transferred in favour of 2nd Respondent way back on 05.11.2003 and the Board in which the Petitioner was a part also unanimously approved the share transfer and handed over the share certificate in respect of the 2nd Respondent. It has specifically been pleaded that the management of Meezan Group of companies held a General Meeting of the 1st Respondent company and also of the other companies of the group on 27.04.2011 and the Board thought it fit to invite Panakkadu Hameed Ali Thangal to the meeting wherein it has been resolved to transfer

the management and control of the 1st Respondent company from the hands of the Petitioner to the 4th Respondent pursuant to which the Petitioner tabled before the Board a duly signed share transfer form to transfer all the shares held by him to the 4th Respondent which was unanimously approved in the meeting. It has been averred in the counter that the Board thus had no other option but to remove the Petitioner from the post of Managing Director while retaining him as Director and filing of Form-32 with the ROC, Kerala in respect of the Petitioner duly indicating the reason of change in the designation. The Answering Respondents referred to clause 43 of the Articles of Association of the 1st Respondent company whereby the Board of Directors have been given powers to appoint the Managing Director and to manage the affairs of the company based on which the Board on its wisdom appointed 4th Respondent as Managing Director of the 1st Respondent company in the Board meeting held on 25.09.2011. In the Board Meeting held on 09.08.2011, Respondents 3 and 4

have been made additional Directors of the 1st Respondent company as per the provisions of Section 260 of the Companies Act, 1956 and later they were confirmed as Directors in the AGM of the 1st Respondent company held on 30.09.2011. Based on these reasons, the Answering Respondents prayed to dismiss the Petition.

7. The Petitioner has filed a rejoinder wherein the claims and contentions made by the Respondents in their counter have been controverted and submitted that one of the persons who attended the meeting on 28.05.2011 is Mr. Salauddin Nalakath, who had vacated his office as Director because he failed to obtain the qualification shares that were required of him as per Article 29 of the Articles of Association and the said vacation of office has happened on 05.11.2003 as per the provisions of Section 283(1) (a) of the Companies Act, 1956, and the effect of his vacation of his office was intimated to the ROC concerned. Similarly, the 2nd Respondent has also vacated the office for the same reasons. Therefore, the Board

meeting purportedly held on 28.05.2011 is *void ab initio* and the fact that 500 equity shares of Mr. Salauddin Nalakath were transferred to 2nd Respondent on 05.11.2003 has been denied as false and fabricated. Therefore, the subscriber who has not paid for the shares subscribed by him cannot transfer the shares without paying the same. The Petitioner also contends that assuming without admitting that the 2nd Respondent is still a Director of the 1st Respondent company, the purported meeting held on 25.09.2011 would still be invalid as there is no proper quorum at that meeting. Therefore, the meeting held without quorum is not valid and the consequent resolution passed at the meeting or subsequent meetings are also vitiated and it is only in the meeting held on 25.09.2011 the Respondents 3 and 4 have been appointed as Directors. The presence of single Director would not constitute a meeting within the meaning of the Companies Act, 1956 unless such meeting is held pursuant to Regulations 75 of Table-A and thus, the resolution appointing Respondents 3 and 4 as

Directors is not valid. He also contends that had there been a voluntary transfer of his shares, then, the consideration of the same would have not been missing, which is one of the essentials ingredients of a valid contract. But, he was forced to sign the share transfer form without payment of the consideration. Therefore, for this reason also, the purported transfer of shares is *null and void*.

8. Based on the pleadings of the parties, the main issue involved therein is as follows:-

As to whether or not the purported transfer of shares by the Petitioner is accordance with the provisions of the Companies Act and the Articles of Association of the Company.

9. Findings on this issue will certainly have bearing on the *locus standi* of the Petitioner to file the Petition but this issue cannot be treated as a preliminary issue, because it is a mixed question of facts and law. Therefore, we proceed to examine the circumstances

under which the purported transfer of shares of the Petitioner took place. Under para 6 (vi) of the Petition, it is mentioned that a meeting of the Board of Directors purportedly held on 27th April, 2011 of the imaginary entity 'Meezan Group' under the chairmanship of one Panakkadu Hameed Ali Thangal (for short, Hameed Ali Thangal), it was resolved to entrust the entire control of all the business of Meezan Group with 4th Respondent and it was also resolved to transfer the entire shares held by the Petitioner to 4th Respondent. In relation to this fact, the Respondents under para 19 of their counter admitted that Hameed Ali Thangal, who is great leader, was invited to the Board Meeting of the Meezan Group' companies in which it was resolved to transfer the management and control of the 1st Respondent company from Petitioner to 4th Respondent and the Petitioner tabled before the Board a duly signed share transfer form to transfer all the shares held by him to the 4th Respondent, which was unanimously approved in the meeting. This clearly establishes that it was a meeting of the 'Meezan

Group' but not that of the Board of the 1st Respondent company, which is the independent entity governed by the provisions of the Companies Act and its Articles of Association. There is no notice of General Meeting, no agenda, no explanatory statement. No reason to hand over the management of 1st Respondent company to 4th Respondent. There is no explanation, as to why the shares of the Petitioner were transferred to 4th Respondent. Thus, the procedure adopted in the purported meeting is all unknown to law. The question arises that as to why an outsider viz., Hameed Ali Thangal will interfere in the management of the 1st Respondent company. In actual, it was on behest of the said outsider that the Petitioner was coerced to put his signature on the Share Transfer Form to transfer the shares to Respondent No.4. Obviously, the motive behind such action was make eligibility of Respondent No.4 for being appointed as Director as required under para 29 of the Articles of Association of the 1st Respondent company, which provides as under:

"The qualification of a Director shall be holding in his own name 5(five) Equity Shares in the

Company. The Directors appointed or elected shall take the qualification shares within two months from the date of their appointment"

10. Thus, this act of Respondent No.4, in connivance with the great man, clearly amounts to coercion and undue influence because it is nowhere mentioned that the Petitioner offered to sell his share to 4th Respondent with or without consideration. There was no properly constituted Board of the 1st Respondent company, to give the required approval to the transfer of the shares held by the Petitioner in 1st Respondent company. Thus, the act of removing the Petitioner from the position of the Managing Director to Director, and transfer of his shares to Respondent No.4 and appointment of 4th Respondent as Managing Director of the 1st Respondent Company is contrary to law and the Articles of Association of the 1st Respondent Company. In order to know such requirements, para Nos. 15 to 18 of the Articles of Association of the 1st Respondent company are reproduced as follows:-

"15. Subject to the restrictions of these Articles, shares shall be transferable, but every transfer must be in the form prescribed under section 108 of the Companies Act, 1956 and the provisions as to the

transfer and the instrument of transfer contained in section 108 of the Companies Act, 1956 so far as it is applicable to a private company shall apply. A fee not exceeding Rs.2/- as the Board of Directors may determine from time to time shall accompany the application for transfer.

16. No member shall be entitled to transfer his shares in the company except with the previous sanction of the Board of Directors.(Emphasis supplied)

17. No share shall be transferred to a person who is not a member so long as any member is willing to purchase the same at value agreed to mutually by the transferor and transferee and in the event of dispute, by arbitration governed by sole arbitrator being the then Chairman of the Board of Directors.

18. In order to ascertain whether there is any one among the members willing to purchase the share, the member intending to transfer the share shall give notice (hereinafter called a transfer notice) of his intention in writing to the Company. Such notice shall specify the number of shares proposed to be transferred and their value and also state that the company has been appointed as his agent for the sale of share therein mentioned. However, this provision is not applicable to a mutually agreed transfer of share from one member to another or from one member to his wife or her husband, sons and daughters."

11. Thus, it can be seen that the purported transfer is not in accordance with the above mentioned provisions of the Articles of Association because there was no previous sanction of the Board of Director as was required under para 16 of the Articles of Association of the 1st Respondent company. Because, the Articles of Association has a binding force on the shareholders

and the company, this has been settled by the Hon'ble Apex Court in **Naresh Chandra Samyal Vs. Calcutta Stock Exchange Care**, reported in AIR 1971, SC 422.

12. As per para 6(b) (iii) of the Petition, the Petitioner impugns form 32, that notified his change in designation from Managing Director to Director that was filed with the Registrar of Companies, Kerala, vide purported Board Meeting held on 15th September, 2011, and this fact has been admitted by the Respondents under para No.27 of their reply, by stating that the Petitioner new that he was not removed from the post of Director by the 1st Respondent company.

13. If the above is an admitted fact, then, the Petitioner is the Director of the 1st Respondent company, then, no notice was served on the Petitioner for purported General Meeting and Board Meetings that are in question as detailed in the preceding paragraphs. Under paras 24 and 25 of the Articles of the Association of the 1st Respondent company, the

procedure provided for holding 'General Meeting' is as follows:-

24. Ten days clear notice, specifying the place, the day and the hour of every General Meeting and in the case of any special business to be transacted a statement setting out all material facts concerning the business attached to the notice, shall be given to the members in the manner hereinafter provided. Every Annual General meeting shall be called for at any time during business hours, on a day that is not a public holiday and shall be held at the Registered office of the company or at any other place in the locality in which the registered office is situated and notice calling for such meeting shall specify it as Annual General Meeting. The Directors may whenever they think fit convene general meetings and shall also convene extraordinary general meetings on requisition by such number of members as are required under section 169 of the Companies Act, 1956.

25. Two members present in person shall be the quorum for the general meeting of the shareholders. No business shall be transacted at any General Meeting unless a quorum of members is present at the time the meeting proceeds to business.

14. The Petitioner contended that the purported Board Meeting held on 25th of September, 2011 is invalid for the reasons that no notice was given to him, and there was lack of quorum. In this connection, the Respondent would contend that the entire shareholding of the Petitioner stood transferred to Respondent No.4. The office of the Petitioner

automatically vacated in terms of Section 283 (1) (a) of the Companies Act, 1956. So, it was not required to give notice to Petitioner. The stand taken by the Respondent is contradictory, because in the counter, it is admitted that the Petitioner's designation was changed from Managing Director to Director. Therefore, the defence of the Respondents falls flat. It is otherwise on record that the Petitioner is a subscriber to the Memorandum of the company, he is deemed to have become Member. In case of subscriber, no application or allotment is necessary to become a Member. Therefore, the said meeting is invalid and the resolutions passed therein including the appointment of the Respondent No.4 as managing Director and Respondent No.3 as Director are also invalid. In support of this view, we refer to the ruling of the Hon'ble Appex Court given in **Parameshwari Prasad Gupta Vs. Union of India**, reported in 1973 SC, 2389, wherein it was held that '*a meeting of the Board of Directors held without sending notice to the Director was invalid and resolutions passed therein are*

also not valid'. Thus, the appointment of Respondent No.4 as Managing Director and Respondent No.3 as Director was with a view to gain majority and control over the Board, which is an act of oppression. In this connection, we may refer to another ruling given in **Kshounish Chowdhary & Ors Vs. Kero Rajendra Konolthics Ltd. & Ors.**, reported in (2002) ICLJ 552 (CLB), wherein it was held that the appointment of additional directors made to gain majority control over the Board is neither *bonafide* nor in the interest of the company which was made only with a view to gain majority and control over the Board. This amounts to an act of oppression.

15. In view of the facts and circumstances, and the legal position discussed above, it is held that the Petitioner fulfilled the requirement under Section 399 of the Companies Act, 1956 to maintain Petition and the acts on the part of the Respondents are harsh, burdensome, lacking probity and are continuously against the interest of the 1st Respondent company and its shareholders. The Petitioner has established that

the 1st Respondent company is liable to be wound up on just and equitable grounds, but such winding up would be prejudicial to its shareholders. Therefore, the Petition is allowed by setting aside the transfers purported to have been made to the 4th Respondent by the Petitioner and the 2nd Respondent and the subsequent transfers made by the 4th Respondent to 2nd and 3rd Respondents and 1st Respondent company is directed to rectify the Register of Members accordingly. However, the 2nd Respondent shall perform the functions of the Director of the 1st Respondent company till next AGM is held. The shareholders of 1st Respondent company will be at liberty to decide the continuation or otherwise of 2nd Respondent in the forthcoming AGM. We also declare the removal of the Petitioner from the post of Managing Director as invalid. The Petitioner is placed to the position of the Managing director of the 1st Respondent company w.e.f. 27.04.2011. However, he shall not be entitled to any remuneration for the interregnum period. Consequently, all the documents filed on or

after 27.04.2011 under digital signature of 2nd Respondent are declared as null and void, and set aside. The Petitioner, being the Managing Director, is directed to regulate the affairs of 1st Respondent company in accordance with law. Interim order, if any stands vacated. There is no order as to costs.

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

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