

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH,  
CHENNAI

**TCP 157/2016**  
(No.6/2015)

Under Sections 237(b), 397, 398, 402, 403, 406 read with Schedule XI and other  
Applicable provisions of the Companies Act, 1956

In the matter of

**T.S.Sivakumar & 4 others**

**Vs.**

**M/s.Hotel Mass Private Limited & 6 others**

*Order delivered on 3<sup>rd</sup> of October, 2017*

CORAM


**CH.MOHD.SHARIEF TARIQ, MEMBER (JUDICIAL)**  
**S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

*For Petitioner* : *M/s.A.R.Ramanathan,*  
*SK.Rahul Vivek*

*For Respondents* : *P.S.Ganesh, Kurian and Associates*

**ORDER**

Per: S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

The First Petitioner is Mr.T.S.Sivakumar, is a shareholder of the R1 Company who is presently a 1/11<sup>th</sup> shareholder in the Company holding 1000 shares out of the total 3,23,860 issued, subscribed and paid up share capital of the Company. 

The Second Petitioner is Mr.T.Thiagarajan, is a 1/11<sup>th</sup> shareholder in the R1 Company holding 3000 shares out of the total 3,23,860 issued, subscribed and paid up share capital of the Company. That apart he is also a legal heir in entitled to 1/3<sup>rd</sup> share in the 1000 shares allotted to Late Mrs.Vandarkuzhali.

The Third petitioner is Mrs.Rani Mangammal , a shareholder of the company who is presently a 1/11<sup>th</sup> shareholder in the R1 Company holding 1000 shares out of the total 3,23,860 issued, subscribed and paid up share capital of the Company.


The Fourth petitioner is Mr.T.Senthil Kumar, , is a legal heirs of Late Mrs.Vandarkuzhali entitled to 1/3<sup>rd</sup> share in the 1000 shares allotted to Late Mrs.Vandarkuzhali and as such he is entitled to file the present application as a shareholder of the Company.

The fifth petitioner is Mrs.T.Valli, is the legal heir of Late Mrs.Vandarkuzhali entitled to 1/3<sup>rd</sup> share in the 1000 shares allotted to Late Mrs.Vandarkuzhali and as such she is entitled to file the present application as a share holder of the Company.

There are totally 11 members in the Company. The Petitioners herein in total constitute 4/11<sup>th</sup> of the total number of members of the Company and hence they satisfy the requirements of Section 399 of the Companies Act, 1956. Therefore, the petitioners are entitled to file the present Petition.

**Particulars of the first respondent:**


The 1<sup>st</sup> respondent is M/s.Hotel Mass Private Limited, a Company registered under the Companies Act, 1956, having its registered office at No.152 and 154, Maraimalai Adigal Salai, Orleanpet, Puducherry 605 001. The said Company was incorporated on 30<sup>th</sup> October, 1982 having CIN No.U55101PY1982PTC000194. The authorized share capital of the said Company as on 29.09.2014 is Rs.4,25,00,000/- divided into 4,25,000 equity shares of Rs.100/- each. The issued, subscribed and paid up share capital of the company is Rs.3,23,86,000/- divided into 3,23,860 equity shares of Rs.100/- each out of which 12,180 equity shares of Rs.100 each was allotted to the second respondent. The petitioners have stated that this was done for consideration other than in cash. The main objects of the Company are as follows:



**The main objects to be pursued by the company on its incorporation are:**

1. To carry on the business of Restaurants, Refreshment rooms hotels, boardings, loading houses, open air booths, motels, seaside rest house.
2. To manufacture and deal in bread, flour, biscuits, pastry, cakes, confectionery and other allied products.
3. To manufacture, prepare and deal in mineral waters of all kinds fruit juices and soft drinks and ice.”

**Particulars of the Second Respondent:**

The second Respondent is Dr.M.A.S.Subramanian, is the son of Late Mr.M.A.Shanmugam The second Respondent was the Managing Director of the Company. The second respondent held 2,55,860 equity shares of each Rs.100/- in the Company which includes 12,180 shares allotted to him. The petitioners have contended that this was done as fully paid up without payments being received in cash. 



**Particulars of the Third Respondent:**

The third respondent is Mrs.Shanthi Subramanian wife of Dr.M.A.S.Subramanian. The Third Respondent was the Director of the Company who held 30000 equity shares of each Rs.100/- in the Company.


**Particulars of the Fourth Respondent:**

The fourth Respondent is Mr.S.Suresh, son of Dr.M.A.S.Subramanian. The fourth Respondent held 10000 equity shares of each Rs.100/- in the Company.

**Particulars of the Fifth Respondent:**

The fifth Respondent is Mr.S.Sundar, son of Dr.M.A.S.Subramanian. The fifth Respondent held 10000 equity shares of each Rs.100/- in the Company.


**Particulars of the Sixth Respondent:**

The sixth Respondent is Mrs.Suganthi Prabhakar, wife of Mr.Prabhakar, The sixth Respondent held 10000 equity shares of each Rs.100/- in the company. 

**Particulars of the Seventh Respondent:**

The seventh Respondent is M/s.Vee Pee Estate and Hotels Pvt. Ltd. having its office at No.16, ECR Cuddalore Main Road, Kirumampakkam, Puducherry 607 402.

**The petitioners have submitted that**

1. The Respondent Company was incorporated and registered with the Registrar of the Companies, Pondicherry, in the year 30.10.1982, by Late Mr.M.A.Shanmugam, Late Mrs.S.Senganiammal, wife of Late Mr.M.A.Shanmugam, and the second petitioner as the founding members with each subscribing to 10 equity shares of Rs.100/- each. The Company was founded as a Private Limited Company with the main objects inter-alia to run hotels under the name and style "Hotel Mass Private Limited". Subsequently, the shares of the Company were allotted to the second Respondent, as the son, Mrs.S.Velvizhi, Third Petitioner herein Mrs.R.Manimegalai and Late Mrs.Vandarkuzhali as the daughters, and the Petitioners No.1 as the son-in-law of Late M.A.Shanmugam. 

2. The petitioners have stated that as per Form No.2 dated 14.03.1983, in total 30000 equity shares were allotted to the family members out of which 17820 was allotted as payable in cash and remaining 12180 equity shares of Rs.100/- each was allotted for a consideration otherwise than in cash to Late Mr.M.A.Shanmugam in lieu of selling his property being plot of land measuring 52 Kuzhies and 14 Veasams situated at Pudupalayam Villagem Oreleanpet, Pudupalayam Village, Puducherry together with an unfinished building constructed over the aforesaid property. It is submitted that the said shares were allotted in favour of Late Mr.M.A. Shanmugam prior to the execution of the Sale Deed for the above said land and building. However, the Company was put in possession of the said lands and it had completed construction activities for setting up the hotel. The petitioners have stated that as per Form No.2 dated 14.03.1983 this has been amply demonstrated and have filed the same. They have further stated that the Company was formed by the members of the family and hence the same is in the nature of quasi partnership under the guise of the private limited Company and

hence the directors of the Company owe a fiduciary duty to the member/s of the Company.

3. The aforesaid Late Mr.M.A.Shanmugam died on 06.06.1984 even before executing the sale deed in favour of the Company. Subsequently as the second Respondent, who is the son of Late Mr.M.A.Shanmugam and also being the eldest educated member of the family, took control over the Company and its affairs. The petitioners submitted that the entire 16000 equity shares of Rs.100/- each which stood in the name of Late Mr.M.A.Shanmugam was taken by the Second Respondent with the consent of the legal heirs of Late Mr.M.A.Shanmugam based on his promise that he will transfer the aforesaid property to the Company, manage and develop the Company for the benefit of all the members. It is further submitted that the 12180 equity shares which were allotted to Late Mr.M.A.Shanmugam, for consideration payable otherwise than in cash after he promised to register the aforesaid land in the name of the Company and the land is shown as an asset in the balance sheet of the Company as on 31.03.2011. The notes to the balance sheet of the Company as on 31.03.1988 contains disclosures which would further show that the Company




was in possession and the real owner of the property and qualification statement made by the then Directors that they were taking steps to transfer the property to the Company would further fortify the contention of the petitioners which require no further proof.

4. After the death of Late Mrs.S.Senganiammal, the equity shares which stood in her name were allotted to the family members of the Second Respondent, who are Respondent Nos.3 to 6.

5. The petitioners submitted that they reliably understood that second Respondent in connivance with Respondent Nos.3 to 6 through meetings held on various dates between the years 1998 to 2003 increased the authorized, issued and paid up capital of the Company without giving notice to any other members of the Company. It is pertinent to the state here that the meetings held to increase the authorized, issued and paid up capital of the Company were attended only by Respondent Nos.2, 4 and 5. It is further submitted that Respondent Nos.4 and 5 are the sons of the Second Respondent and the sixth Respondent is the daughter of the second Respondent. The petitioners further submitted that they were kept



in dark about the meetings and no notice of AGM was ever served on the petitioners till date. The petitioners submitted that the mala fide intention of the Respondent No.2 to 6 can be seen from the very fact that no further shares were offered/allotted to the other members apart from those allotted by Late Mr.M.A.Shanmugam but on the other hand all further shares of the Company were issued either in favour of the second Respondent or his family members, who are Respondent Nos.3 to 6 herein and such allotment of further shares to 2<sup>nd</sup> Respondent's family without offering to other family members is per se illegal and is against the provisions of Section 81 of the Companies Act 1956

6. The paid up equity share capital of the Company as on 31.03.2011, which is the last known balance sheet of the Company, is 3,23,860 equity shares of Rs.100/- amounting to Rs.3,23,86,000/-. The shareholding pattern of the members of the Company as on 31.03.2011 is as follows: 

Sl. No.	Name of the Shareholder	No. of shares
1	Dr.M.A.S.Subramanian (Respondent No.2)	255860
2	Mrs.Santhi Subramanian (Respondent No.3)	30000
3	Mrs.SuganthiPrabhakar (Respondent No.6)	10000
4	Mr.Suresh (Respondent No.4)	10000
5	Mr.Sundar (Respondent No.5)	10000
6	Mr.T.Thiagarajan (Petitioner No.2)	3000
7	Late Mrs.Vandarkuzhali	1000
8	S.Velvizhi	1000
9	T.S.Sivakumar (Petitioner No.1)	1000
10	Mrs.RaniMangammai (Petitioner No.3)	1000
11	Mrs.R.Manimegalai	1000

It is submitted that Mrs.Late Vandarkuzhali died on 30.09.1997 and the petitioner No.2, 4 and 5 are the legal heirs of Late Mrs.Vandarkuzhali who have succeeded to the estate of the deceased and as such they constitute a single unit in so far as the shares of Late Mrs.Vandarkuzhali is concerned and hence are entitled to maintain the present petition.

7. The petitioners submitted that the Company being a private limited company through its Articles of Association vide clause 3 and 15 prohibits transfer of shares to person other than

members. Further, clause 16 of the Articles of Association of the Company confers upon the members right of pre-emption in case any member wants to sell his/her shares. The said clause is to ensure that no member is permitted to steal a march in detriment to the interest of the other family members.

8. During the beginning of the January, 2011 the petitioners herein started to question the second respondent on the various affairs of the Company including the increase of his family holding without any notice to the other members. This was so as the second Respondent nor his family gave any statement of accounts of the Company for any financial year since the business being a family business and the second Respondent being the eldest in the family, his words were trusted by the other members till then and they did not smell any foul play by the second Respondent and his family on the other family members. Since no satisfactory reply was forthcoming, the petitioners herein started demanding the issuance of statement of accounts by meeting the second Respondent in person or by letters.

9. The petitioners submitted that the Company being a family business is more in the nature of a quasi partnership and

therefore the Respondent No.2 and 3 the Directors of the Company, who are also members of family entrusted with the responsibility of the managing the affairs of the Company, owe a fiduciary duty towards the other members as the business is run for the benefit of the family and there exists an element of trust among the members of the family that they would be kept well informed about the affairs of the company.

10. The petitioners submitted that they met and discussed with the second Respondent over the phone and also in person and sought details but the second Respondent was evasive and did not provide any details. While things stood thus, the petitioners had reliably learnt that the Respondent Nos.2 to 6 and Respondent No.1 represented by the Respondent No.2 had entered into a secret agreement with Respondent No.7 to sell the properties of the Company and as a consequence of the same Respondent No.2 to 6 had executed a Power of Attorney in favour of the Respondent No.7 company which in turn had mortgaged the properties to Indian Overseas Bank. It is pertinent to state here that the second Respondent and his family members at all the meetings with the petitioners and the other members remained tight lipped about the



actual position of the transaction and brushed aside the claims of alleged sale as baseless. The second Respondent further assured the members of the family that the property still remains with the Company and all necessary steps would be taken to protect the interest of the company and its properties while refusing to show the title deeds of the property.

11. Since no satisfactory reply was forthcoming, the petitioner No.1 sent letters on 14.07.2014, 14.08.2014 and 16.08.2014 seeking various details and accounts of the Company, while the petitioner No.3 sent a similar letter on 14.08.2014 and the second Respondent despite receipt of said letters neither provided details nor sent a reply. Left with no other alternative, petitioners chose to conduct a search with the Registrar of Companies through a Company secretary who gave his search Report 29.09.2014. To their utter shock and dismay, it was found that the Company had not submitted its balance sheet with the Registrar of Companies after the financial year 2010-2011.

12. On discreet enquiries made by the petitioners during September, 2014, it came to light that Respondent Nos.2 and 6 had sold the lands standing in their name while the actual ownership



vested with the Company along with certain other lands to Respondent No.7 through a Sale Deed dated 31.10.2011 registered as the Document No.1844 of 2013 in the office of the District Registrar, Puducherry. It appears that the second Respondent along with the family members chose to clandestinely sell their shares in the Company along with the assets of the Company. After realizing that he has been cornered and the issuance of balance sheets as demanded by the members would open the Pandora's box and the fraud played by him and his family members in fabricating the accounts of the Company and their mismanagement of the Company would come to light. The petitioners submitted that the above fact was never made known to the petitioners at any point of time by the Respondent Nos.2 to 7. The petitioners submitted that the Respondent No.1 to 6 never informed them on the above sale at any point of time and have completely misled the other members of the family at all points of time. The petitioner submitted that the entire property over which the hotel was built belong to Late M.A. Shanmugam, who has purchased the same for running a hotel in one portion and while running a theatre in the other. It is for these reason 12180 shares were allotted to him during 1983 for

consideration other than cash in lieu of selling his property to the Company. It was also the desire of Late M.A.Shanmugam to expand the hotel and to fulfill the desire of Late M.A.Shanmugam, the other family agreed to relinquish their right either in the joint family properties in favour of Late Mrs.M.A.S.Senganiammal or the Second Respondent herein.

13. The act of selling the shares of 2<sup>nd</sup> Respondent and his family members along with the assets of the Company pertaining to Hotel Mass alone prove that whole deal has been done surreptitiously and with mala fide intention solely to oppress minority shareholders like petitioners and harass them. The Petitioners as shareholders have not received any notice regarding the said sale or any part of the said sale. The petitioners have been totally discarded by the Respondent Nos.2 to 6. The petitioners were advised to state that the sale effected by second Respondent is not valid and deserves to be set aside as no special resolution under Section 293(1)(a) of Companies Act have been passed by the Company for effecting such sale and lease of Company assets to 7<sup>th</sup> Respondent and they have not followed the mandatory requirements under Companies Act. No form has been filed with

the Registrar of Companies recording any such special resolution under said Section. Sale of shares by Respondents 2 to 6 to Respondent 7 without offering to the other Members is against the provisions of Articles of Association of the Company and as such the same is also invalid. The whole deal is void ab-initio. The petitioner stated that though the sale deed was dated 31.10.2011 it has been assigned permanent document number by Sub Registrar only on 01.04.2013. The whole deal has been done hurriedly so as to gain illegal monetary and other benefits with some hidden agenda. Thereafter, the petitioners applied for encumbrance certificate in respect of the entire land which disclosed the aforesaid sale made by Respondent Nos.2 to 6 to Respondent No.7. It is pertinent to state here that the land sale has been made by the company land as individual land.

14. Subsequently, the petitioners applied for and obtained a certified copy of the aforesaid sale deed dated 31.10.2011 registered as the Document No.1844 of 2013 in the office of the District Registrar, Puducherry. On perusal of the document, it was found that the respondent No.2 to 6 have sold the entire equity share of the company held by them to Respondent No.7 in complete

contravention of the provisions of the Articles of Association. Further, second respondent as the Managing Director of the company has sold the buildings, movables and fixtures of the company for Rs.3,93,80,706/- to Respondent No.7, which much less than book value of the building disclosed in the balance sheet for the financial year 2010-2011.

15. It is submitted that alienation of property/ies belonging to the Company has to be approved by the General Body by Special Resolution. The petitioners submitted that no notice of the General Body meeting was ever served on them with an agenda to sell the properties of the Company. It is further submitted that the properties of the Company have been sold by the Respondent Nos.2 to 6 herein for their personal gain both in detriment to the interest of the Company and other family members. By the said illegal actions of the Respondents 2 to 6, the main and only business of the Company has been sold lock, stock and barrel without the knowledge of petitioning shareholders.

16. The petitioners submitted that by the virtue of the aforesaid illegal sale, the substratum of the Company has been completely lost in as much as the Company was founded for the



benefit of the family by the Late Mr.M.A.Shanmugam through joint family properties. It is submitted that the Respondent No.2 to 7 have indulged in the above illegal activities to deprive the petitioners of their legitimate rights and dues.

17. The petitioners submitted that it is common business prudence to sell the assets of the Company at market price which shall generally be over and above book value. On the other hand, Respondent Nos.2 to 7 herein have chosen to sell the assets of the Company without any authorization at a throw away price to make an illegal monetary gain out of the transaction. In the case on hand goodwill has not been valued. To add insult to injury the Respondents have till date not brought into the Company the consideration and the same would be evident from the fact that the accounts of the Company has not been filed with the Registrar of Companies, pursuant to the sale of the assets of the Company.

18. On a close perusal of the balance sheet of the Company for a financial year 2010-2011, it appears that Respondent Nos.2 and 4 and certain other people have given unsecured loans to the Company. It is submitted that there was no necessity for the Company to avail any loans from any one more



over when the authorized capital of the Company is not fully paid up and therefore in case of need of further money the Company could have issued further shares of the members. The above act further leads to a suspicion whether the Respondent Nos.2 to 7 have paid for the additional equity shares allotted to them in an illegal manner by keeping the petitioners in dark all along till date and unless an investigation is order by this Hon'ble Court, it may not be possible to unearth the further illegal actions of the Respondent Nos.2 to 6.

19. The petitioners have stated that the above acts would amply demonstrate that the Respondent Nos.2 to 7 in a systematic manner have misled the other members of the Company by grabbing control of the Company in order to divert the assets of the Company for their personal benefit in a manner prejudicial to the interests of the other members of the Company.

20. The petitioners have submitted that it is in the interest of justice that the reliefs as sought for by the petitioners be granted failing which the petitioners would be put to irreparable loss and injury which cannot be compensated in monetary terms.

The petitioners had **prayed for the following reliefs:**

- (a) To order an investigation into the affairs of the 1<sup>st</sup> Respondent Company;
- (b) To direct the Respondent Nos.2 to 6 herein to make good the misappropriated funds, investments and assets as to be revealed in the investigation of the affairs of the 1<sup>st</sup> Respondent Company;
- (c) To set aside the sale of 315860 equity shares of Rs.100/- each sold by the Respondents No.2 to 6 to Respondent No.7;
- (d) To reconstitute the Board of directors of the first Respondent company;
- (e) To prepare a scheme of Administration to conduct and regulate the affairs of the 1<sup>st</sup> Respondent Company on a day to day basis;

**The respondents 2 to 6 vide their reply** have submitted that the company Petition is not maintainable in law or facts and it is barred by limitation. They have stated that the petitioners has not approached this Hon'ble Court with clean hands and that the act of petitioners is an abuse of process of court and law and is hit by res

judicata. The Respondents have submitted that the petitioner has not given the exact particulars and equity shareholding of the respective respondent. And the 2<sup>nd</sup> Respondent has denied the averment that 12180 equity shares of R-1 company were allotted to 2<sup>nd</sup> Respondent without payment being received and has stated that the shares were allotted to the 2<sup>nd</sup> Respondent for valuable consideration only.

It was submitted by the respondents that the petitioners herein do not have any personal knowledge with regard to the incorporation of the Company and about the shares. There were 30,000 equity shares of Rs.100/- each. The 2<sup>nd</sup> Respondent herein along with Mrs.Senganiammal and Mr.Thiyagarajan who held 10000 shares respectively each.

It was submitted by the respondents that the company did not have any immovable property as claimed by the petitioners herein. The claim of the petitioner with respect to equity shares held by them is subject to documentary proof.

The allegation made in para 2 are denied. The 1<sup>st</sup> Respondent was a separate legal entity incorporated under the

Companies Act and at no stretch of imagination the same can be considered as a quasi partnership entity as claimed by the petitioners. The allegation with regard to the manner in which 16000 shares were transferred to the 2<sup>nd</sup> Respondent as made in para 3 has been vehemently denied by the respondents. The transfer of shares was legally made to the 2<sup>nd</sup> Respondent and no aspersion can be raised by the petitioners and the other allegations with regard to balance sheet of the Company are denied and the petitioner was put to strict proof with regard to the same.


The respondents have stated that it is pertinent to highlight that the sum of Rs.3,80,23,656/- was the unsecured loan at the end of March 2011 and Rs.49,52,892/- is the secured loan for the financial year ending March 2011, with the **accumulated loss of 736.67 lakhs.** The respondents have stated that the averments in para 4 are matter of record and hence not traversed into for sake of brevity.

The respondents have denied the averments in para 5. In order to borrow money by way of term loan from Tourism Finance Corporation of India Ltd. the respondents, after issuing proper notice to the respective share holders were forced to increase the



authorized share capital of the Company and proper resolution to that effect was also passed on 14.06.1999 in the meeting. The loan amount to the tune of Rs.400 lakhs was availed from Tourism Finance Corporation of India Ltd. to sustain and run the Company.

Further the equitable mortgage of lease hold rights of the Company with respect to the property at Pondicherry earlier known as Anna Theatre was created by depositing the original documents on 23.03.1999 itself, in favour of Tourism Finance Corporation of India Ltd. to create security. After availing the loan an official from Tourism Finance Corporation of India Ltd. was made the nominee director to the 1<sup>st</sup> Respondent Company and relevant form 29 has been filed before the Registrar of Companies. The said nominee director was controlling the day to day affairs of the Company with full decision making power.

The proposal to raise the share capital in aforesaid circumstances was placed in the meeting and the same being beneficial to the Company, the issue of further share capital was approved. The averments in para 6 are matter of records and subject to proof. Hence, not traversed into 



The respondents have stated that with regard to para 7 of the Petition that there is no violation of Clause 15 of the Articles of Association. Clause 3 is a general proviso regarding share capital and the petitioner be put to strict proof with regard to the averments made in para 8. The Respondents stated that it is necessary to bring to the notice of the Hon'ble Court that the wife of the 1<sup>st</sup> petitioner Velvizhi and the wife of the 2<sup>nd</sup> petitioner vandarkuzhali already had filed the suit O.S.No.3 of 1996 before the Principal District Judge at Pudhucherry, jointly, wherein the issue raised in this petition has been put forth in the suit and the suit ended up in compromise. Similarly, O.S.68/2014 has been filed by Velvizhi – the wife of first petitioner. Thus, it has been averted in the reply that the present petition before this Hon'ble Court is hit by res judicata.

The Respondents stated that they have applied for the certified copies of the documents no sooner the documents are made ready, the same shall be produced before this Hon'ble Court.

It has also been submitted that the allegation that during January 2011 the petitioner questioned the second Respondent regarding the various affairs of the Company is false.

In addition to the above, the Respondents have stated that there is no fiduciary duty as claimed by the petitioners in para 9 of the Petition, the Respondents submitted that the petitioners concealed the facts about the suits filed by Vandarkuzhali and Velvizhi and have approached the Hon'ble Court with unclean hands.

The allegation made in para 10 of the Petition were vehemently denied and Respondents have submitted that petitioners did not come forward to inspect the records to which they had access without any embargo.

In reply to para 11 of the petition it is submitted that as the first petitioner could not get any interim orders in the suit filed by his wife velvizhi in O.S.68/2014, as an after thought, the alleged referred letter has been sent.


It has been submitted that the shares of the Respondents 2 to 6 were transferred and conveyed along with the land and building which was owned, possessed and enjoyed by Respondents 2 to 6 as on 31.10.2011. The Respondents 2 to 6 do not have any right or interest in the 1<sup>st</sup> Respondent Company and all the records

pertaining to the 1<sup>st</sup> Respondent Company are in the sole custody of seventh Respondent.

The Respondents stated in the reply that the allegations made in para 12 are without any basis. The allegation that there has been fabrication of accounts and mismanagement of Company are false and the petitioner be put to strict proof of the same.

The Respondents submitted that the sale made is legal, valid and binding. The permanent document number has been assigned subsequent to the payment of the fee amount for sale value, by 7<sup>th</sup> Respondent, as demanded by the SRO.

It has been stated in the reply that the allegations in para 14, 15 & 16 with regard to the sale deed are matters of record, and the right of petitioner being share holders are intact even as on today.

It has further been averred by the Respondents that if the movable and immovable of the Respondent 2 to 6 were not sold at the appropriate times and the loans of the creditors were not liquidated, the Company would have seen the adverse phase and ended up in winding up as the 1<sup>st</sup> Respondent Company did not have any credence or name in the market. The Respondents denied 

that there is any requirement for investigation as claimed by the petitioners when the affairs of the Company are transparent and when the sale of moveable and immovable are in accordance with law.

The respondents 2 to 6 prayed for **to dismiss the petition with costs.**

In the **Rejoinder**, petitioners have denied that the present Petition is hit by Res Judicata.

The petitioners had stated that the Respondents 2 to 6 have to prove the contention of the petitioners that 12180 equity shares were allotted as fully paid up against the value of land mentioned in the balance sheet and the Respondents 2 to 6 have not produced any document to disprove the manner of allotment of the shares. The petitioners are now given to understand that in C.P.No.144 of 2000 filed by the Company, the Respondent No.2 has disclosed only the names of his family members as the shareholders of the Company and withheld the names of the other family members for the reasons best known to them.




It was stated that the nature of quasi partnership under the guise of private limited Company is for all practical purposes and hence the Directors owe a fiduciary duty to the members of the Company. It was stated that the actual loss caused to the company due to the mismanagement of Respondent No.2 and his family members.

The petitioners further submitted in the rejoinder that the money borrowed from Tourism Finance Corporation of India Limited was discharged even before initiating the sale of the Company business, for which a condonation of delay in filing satisfaction of the said charges was filed before this Hon'ble Board through Company Petition Nos.20/141/CB/2012 and 21/141/CB/2012. It was submitted that Land and building is shown as an asset in books itself constitute a part performance within the meaning of Section 53A of the Transfer of Property Act, 1882. It was further submitted that notices of meeting for further issue of shares was never circulated to any of the petitioners. The transfer of shares of the Respondents 2 to 6 in the First Respondent Company to a third party, without offering the same to the existing shareholders is in violation of the provisions of the 1<sup>st</sup> Respondent's

Articles of the Association, hence the same is liable to be interfered with by the Tribunal. The very fact that the Company discharged the loans of Tourism Finance Corporation of India Limited, much before the sale of the business of the Company lock stock and barrel, would show that the Company always had flourishing business and the accounts of the Company were fabricated to show as if the company was in financial crisis. The Respondents 2 to 7 to surreptitiously usurp the properties of the Company with mala fide intentions to make an illegal gain with a sole intention to oppress the minority shareholders. The Company has not filed its returns after 2011. No notice was issued to any of petitioners in the manner contemplated in Article 15 of the Articles of Association of the Company regarding issue of fresh shares.

**In CA No.44/2006 in TCP No.157/2016**, the petitioners in the CP have furnished some additional documents in support of their contentions in the petition. In the CA, the petitioners have stated that after receipt of the reply statement it conducted a search on the various documents and resolutions filed by the company. The petitioners have stated that the Respondents 1 and 2 did not file the alleged special resolution dated 25.06.2011 with the ROC in

terms of Section 192 of the Companies Act 1956. The secured loans of the Company were discharged on 13.06.2011 a date prior to the alleged special resolution dt. 25.06.2011. In addition, the 4<sup>th</sup> petitioner had filed an application under RTI Act filed by the 2<sup>nd</sup> Respondent with the election commission during 2006, 2011 and 2016 Assembly Elections to verify the claims made by R2. The 4<sup>th</sup> petitioner paid the requisite amount and obtained the copies of the affidavits filed by R2 with the Election Commissioner for the three assembly elections referred to above. Based on this, it is seen that there was no disclosures about the unsecured loan given to the Company, the details of assets, it was further revealed that the R2 did not show the Company asset as his personal asset. This according to the petitioners establishes the fact that R2 held the asset as a trustee on behalf of the Company and the same was sold by the Respondents for their personal gain and as stated that the documents listed in the CA were not available to them at the time of filing CP.


**In CA No.15/2017 in TCP No.157/2016** the applicants/ respondents Dr.M.A.S.Subramanian & 5 others have again reiterated the earlier statements made in their reply and have stated 

that the property being the land over which the building for the hotel has been the subject property from 1985 onwards. They have given copies of the complaint in CS No.352/185 memo of compromise docket order in OS No.3/96 and the complaint in OS 68/2014 as documents for proper and effective adjudication of the main petition. The applicants/respondents 2 to 6 have submitted that financial assistant was availed from PIPDIC and TFCI, New Delhi and have stated that the loan has been repaid and the documents relating to the sale have also been enclosed by them. They have submitted that the dividends were also paid to the respective shareholders and have stated that Mr.Gupta of TFCI has been the Nominee Director of the Company and has been carrying on the affairs of the Company. The applicants/respondents 2 to 6 have submitted that the documents mentioned in the list were not available with them at the time of filing the reply and due to his old age, the 1<sup>st</sup> applicant/respondent could not organize and collect the documents and file the same along with the reply. They have also stated that the certified copies of documents pertaining to the original application filed by TFCI and connected documents on the




file of DRT Delhi has been applied but the copies are yet to be made ready by the office of Delhi DRT.

In the **counter for CA No.15 of 2017**, filed by the respondents/petitioners it has been stated that the 6<sup>th</sup> petitioner shown in the short cause title of the present petition is M/s.Vee Pee Estate and Hotels Pvt. Ltd., who is also the 7<sup>th</sup> Respondent in TCP No.157 of 2016 and Tribunal had set the 7<sup>th</sup> Respondent as ex-parte on 21.10.2016.

The respondents/petitioners have stated that a perusal of the above petition would reveal that though the 3<sup>rd</sup> respondent died on 01.04.2016 but the applicants/Respondents chose to bring to notice of this Tribunal of the same only on 03.02.2017 when the matter was posted for final hearing. The respondents/petitioners reiterated that the principles of limitation Act do not apply to quasi judicial proceedings. The lease deed is inadmissible in evidence as it not properly stamped as the stamp papers bought in the names of third parties are used for the execution of the lease deed, which will palpably evidence the fraud played by the 1<sup>st</sup> applicant/respondent 

on the Company. It was submitted that the first applicant held it as a trustee who committed breach of trust by selling the assets of the Company by treating it as his personal asset and that the entire sale has taken place in a hurriedly manner for an illegal monetary gain and prayed to dismiss the above application with exemplary cost.

The Respondents/petitioners have sought to set aside the sale of 3,15,860 equity share of Rs.100/- each sold by the applicants/Respondents 2 to 6. In this connection, it is seen that the applicants/Respondents have not adduced any material evidence to prove that the issue of share capital was raised in the Board Meeting and the same was approved as being beneficial to the R1 Company. The applicants/Respondents have stated that there is no violation of Clause 15(3) of the Articles of Association but this has not been proved as could be seen from reading of the relevant provisions contained in the Articles of Association.

Moreover, before selling the shares to R-7, the shares should have been offered to the other shareholders. On their refusal to exercise the right only the shares should have been allotted to the Respondents. But no records have been adduced which will substantiate the statement made by the Respondents. 

The other major issue raised by the petitioners with the sale of immovable property which was to be transferred in the name of the R1 Company for the initial allotment of 12180 equity shares for a consideration, otherwise in cash to late Mr.M.A.Shanmugam. The shares were allotted to late Mr.M.A.Shanmugam in lieu of selling his property being plot of land measuring 52 kuzhies and 14 veesams situated at Pudupalayam Village, Oreleanpet, Pudupalayam Village, Puducherry together with an unfinished building constructed over the aforesaid property.

According to the petitioners, this was done before the shares were allotted in favour of late Mr.M.A.Shanmugam prior to the execution of the sale deed for the above land and building. The R1 company, however, was put in possession of the said land and had completed the construction activities for setting up the hotel. The petitioners have also annexed Form No.2 dt.14.03.1983 in support of their contention. Since late Mr.M.A.Shanmugam died on 06.06.1984 the sale could not be executed in favour of the Company and after death his son, the R2 controls the Company and its affairs. The entire shareholding of the late M.A.Shanmugam amounting to 16000 equity shares were transferred with the

consent of the legal heirs based on the promise of R2 that he will transfer the aforesaid property to the Company for the benefit of all the members of the R1 Company. The property has also been shown as an asset of the R1 Company as on 31.03.2011 and the notes to the Balance Sheet also amplify the above statement. The various averments made by the petitioners and respondents have been discussed above. The petitioners have stated that the Respondents No.2 to 6 had sold the lands belonging to R-1 company along with certain other lands to R7 Company by a sale deed dt.31.10.2011 registered as the document No.1844 of 2013 in the office of District Registrar, Puducherry.

The petitioner have further stated that the Companies property including building, movables and fixtures were sold for Rs.3,93,80,706/- to R7 Company which was much less than the book value of the buildings disclosed in the Balance Sheet for the financial year 2010-11. The respondents have not shown any proof that the valuation was done for the properties of the R1 Company which were sold which due to non execution of the sale deed was held in trust by the R2. The Respondents have also not submitted a Special Resolution with the approval to sell the Company's





properties by special resolution approved by AGM/EGM. In view of the fact, that it has been established that the property in question pertains to R1 Company. The sale consideration has not been shown by the Respondents 2 to 6 to have been debited to the books of accounts of R1 Company.

In view of this, we make the order as follows:-

### **ORDER**

In view of the facts discussed above, it is clear that the Respondents 2 to 6 have sold their entire shareholding to the R7 Company. They have also sold the properties shown in the last available balance sheet for the year 31.03.2001 of the 1<sup>st</sup> Respondent Company. All these points have been, at length, discussed above. Both the petitioners and the Respondents have not produced any documents or the accounts of the R1 Company for the subsequent years which could clearly indicate clear financial position of the R1 Company.

To enable this Tribunal to arrive at a decision based on facts, it is hereby ordered; 

1. That **an independent Auditor may be appointed**, through mutual consent among the parties. to arrive at the value of the property and the buildings of the R1 company when it was sold to the R7 Company. (as on 31.10.2011 in terms of the sale deed attached with the petition). The auditor may also ascertain whether the proceeds have been brought into the books of R1 Company. The independent auditor will also update the accounts of the Company from 01.04.2011 onwards till the current date to ascertain the factual and financial position, with the comments, if any loss has been caused to the 1<sup>st</sup> Respondent Company by the Respondents 2 to 7, and if so, to quantify the same.
2. **A Practicing Company Secretary may also be appointed** through mutual consent among the parties to verify whether the procedures and the practices required to be followed in compliance to the Companies Act and various other rules have been followed while selling the shares of R2 to R6 together with the sale of the R1 Company's assets to R7.
3. The Practicing Company Secretary may also **provide the details regarding shareholding pattern in the R1 and R7** 

**Companies together with the particulars of their Board of Directors** at the time when the assets of the Company and the shares held by respondents No.2 to 6 were sold/transferred to Respondent No.7.

4. The independent Auditor and Practicing Company Secretary may **submit their reports within two months** after their date of appointment.
5. In case, the petitioners and Respondents are **unable to arrive at a consensus** for appointing an independent auditor and Practicing Company Secretary **the parties may approach this Tribunal for their appointments.**
6. The **fees** to be paid to the independent auditor and the Practicing Company Secretary **shall be borne by the R1 Company.**

The Registry shall place the matter before bench after the receipt of the report of Auditor and Practicing Company Secretary.

  
(S.VIJAYARAGHAVAN)  
MEMBER (TECHNICAL)

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

/pb/