

IN THE NATIONAL COMPANY LAW TRIBUNAL

SINGLE BENCH, CHENNAI

TCP NO. 24 OF 2016
(CP NO. 11 OF 2008)

UNDER SECTIONS 397, 398 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF

ARUNODHAYA ENTERPRISES LIMITED

Smt. Sulochana & 2 Others

... Applicant/Petitioners

Vs

M/s. Arunodhaya Enterprises Limited & 6 Others
Respondents

...Respondent/

Order delivered on: 29/12/2017

PARTIES PRESENT:

Shri. T.R. Ramesh

..... Counsel for Petitioner

Shri. Rajasekhar V.K

..... Counsel for the R1, R2 & R4

Shri A. Narayanan

..... Counsel for the R5, R6, & R7

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

ORDER

This is a petition filed under section 397 and 398 of the Companies Act, 1956 registered in CP. No. 11 of 2008 before erstwhile Company Law Board (CLB), consequent upon the constitution of National Company Law Tribunal (NCLT) it was transferred to this Tribunal and renumbered as TCP No. 24/2016.

2. The brief averments made in the petition are:

- The P1 and R2 to R4 were in the business of hiring vessels in the name and style of Sri Kumar Enterprises, a firm, subsequently the same was reconstituted in the year 1999 under the name and style of M/s. Arunodhaya Enterprises. It was resolved to incorporate a company and accordingly M/s. Arunodhaya Enterprises Limited, (the Company) was incorporated in the year 2000. The petitioners together hold 18% of the paid up capital of the Company.
- In order to prosecute the business as per the Memorandum of Association (MOA) of the Company, 3032 sq ft of land has been purchased in the month of June 2000, before the incorporation of the Company. On the incorporation, the P1, one Mr. Mathi. Sozhar and the R3 have been appointed as permanent directors of the Company and the P1 has also been appointed as Managing Director of the Company, who was assisted by her husband.
- The Articles of Association (AOA) of the Company does not provide for appointment of directors by the Board of the Company whereas it provides appointment of director by the General meeting. The R2 and R4 were appointed as directors of the Company in the board meeting held on 30.09.2000 for which the board of directors has no locus standi or authority to appoint the directors in violation of the AOA. The illegal

appointments of the R2 and R4 as directors led to further litigations. The R2 was appointed as Managing Director in the EGM held on 16.12.2002 and this appointment is null and void as her initial appointment as director itself invalid and not enforceable. Further, in the said EGM no agenda was included to sell the immovable property and therefore, the resolution passed for selling the immovable property is null and void. The copy of the minutes of the EGM has not been filed with the ROC. It is also not mentioned in the minutes of the board meeting said to be held on 20.12.2002 that what was the consideration for the sale of the property.

- The said land was purchased by the Company for Rs. 24,20,000/- including the premium. Since the sale deed was not released by the Registrar, a Writ Petition in W.P.No. 16126/2001 was filed before the High Court, Madras and as per the order dated 10.12.2001, the sale deed was received by the Company. The Annual General Meeting (AGM) for the year 2001 was not conducted due to the litigations, however, the P1 had filed statutory report of accounts of receipt and payments on 31.10.2001 which was duly registered by the Registrar of Companies, Chennai (ROC). Subsequently the R2 has filed balance sheets for the year 2001 and 2002 without placing actual facts and figures. In the balance sheet as at 31.03.2002, an amount of Rs. 6 lakhs was shown as paid for fixed assets whereas no such advance was paid by the R2 and

during the said period R2 was not the Managing Director and the P1 was the Managing Director of the Company. The documents were forged and real accounts of the company were suppressed and they were filed only to mislead not only the shareholders but also the statutory authorities like ROC.

- The company could not issue share certificates for an amount of Rs. 13,70,000/- due to the fraud and therefore there were complaints, counter complaints, criminal and civil cases against the directors and P1. These developments have led to forcible exit of the P1 from the position of Managing Director on 01.05.2002. The R3, the husband of the R2 and other directors have compelled the P1 to submit her resignation and they have also obtained all the documents related to accounts etc. The petitioner and her husband were thrown out of their residence and upon filing a suit in OS No. 260/2003 the property was handed over to the P1.
- Some of the shareholders and the R2 to R4 have sent a letter to the P1 on 16.10.2002 to convene an EGM and R2 to R4 have also sent a letter on 24.10.2002 to convene a board meeting on 2.11.2002. The P1 vide her letter dated 29.10.2002 informed the R2 to R4 that she was no more Managing Director that she was relieved from the said post on 01.05.2002 and for the said letter the R2 to R4 have given a furious reply on 2.11.2002. The P1 again wrote a letter to R2 and R4 which was received by R2 and R4 and returned by R3. The P1 vide her letter dated

05.12.2002 wherein she had narrated all and also the fact that the EGM on 16.12.2002 was convened only for the purpose of authorizing the board to raise funds and to repay the un-allotted share money and also to appoint Smt. T. Vembarasi as Managing Director in the place of P1 which would show that the affairs of the company were controlled by the husband of Smt. T.Vembarasi and other persons.

- On 10.12.2002 smt. T. Vembarasi was congratulated by some shareholders but they have been issued with legal notice stating that she was not the Managing Director as on 10.12.2002. The caveat notice issued by one of the director and the notices received from the court would also show that the Smt. T. Vembarasi was functioning as Managing Director even before 10.12.2002.
- Smt. T. Vembarasi and others have forged the documents to show that an AGM was held on 17.09.2001 and filed the same with the ROC. As per the earlier records Smt. T. Vembarasi was not the Managing Director and they have started to file Annual Returns and Balance sheet for the financial year 2000-2001 and 2001-2002. A notice dated 16.08.2002 was issued for the AGM to be held on 16.09.2002 by Smt. T. Vembarasi as Managing Director whereas no such notice was issued to the shareholders of the company. But the EGM took place on 16.12.2002 and due to the harassment met out to the P1, she could not attend the board meeting and the EGM.

- The Annual Return was filed by Smt. T. Vembarasi with a signature of an Auditor but the accounts did not reflect the actual goings in the company and real balance sheet has been prepared by the P1 to show the unbridgeable discrepancies in the accounts and fraud is being played by the R2 to R4.
- The Auditor of the Company has written a letter on 12.07.2002 wherein he had requested to furnish certain documents. The P1 has replied to this letter on 26.10.2002 that Smt. T. Vembarasi and other directors have taken all the account books even prior to 01.05.2002 and also the floppy discs contained the accounts of the Company. The Auditor was aware that the documents were prepared and filed with ROC and it would show that Auditor is serving the partisan interest of some individuals. There was no one to take care of the interest of the Company and during the year the Sale Tax Authorities had issued a show cause notice for the renewal fees for the year 2002-2003. The information received from the Sale Tax Authorities during the month of November 2002 and January 2003 was handed over to the Auditor. However, the auditor or the Managing Director did not follow the statutory requirements and they have not conducted the affairs of the Company in a lawful manner.
- A Land admeasuring 6.75 acres situated in Puthukudi South village was purchased by the Company for Rs. 1,12,300/- in the year 2001. Prior to the purchase, the R3 who entered into an agreement with the original land

owner for value of Rs. 1,70,000/-, however the value was inflated and it was purchased for the market value. The R3 had received Rs. 2 lakhs from the Company for the negotiation. Since he had entered into an agreement with the land owners for the inflated rate, the company completed the sale transactions separately with the land owners. The R3 has not returned Rs. 2 lakhs to the Company and he is attempting to siphon the said money. Subsequently R3 has purchased the said land in his wife's name for a low price of Rs. 2,54,700/-, whereas the actual value is about Rs. 24 lakhs which is evidenced by a sale deed dated 23.04.2007 regarding another property in the same area. The R3 has also taken a sum of Rs. 1,05,850/- from 30.10.2000 to 30.11.2000 for carrying out survey and sub division work of the land situated at Tiruchirappalli purchased by the Company in year 2000, but he has not done the survey and sub division work. It is also the duty of a director when the property has been sold to his wife, it is to be disclosed to the company in terms under section 299 and 300 of the Companies Act, 1956.

- The company invested an amount of Rs. 3.5 lakhs in Tea dust dealership, but the R3 carried on the dealership without furnishing any particulars to the Company. Till date the R3 has not furnished any account to the Company and the Company has not received any report from R3 in this regard.

- A Sale Deed was entered into on 04.08.2006 and registered by Smt. T. Vembarasi, Managing Director based on a board meeting allegedly conducted on 20.12.2002 and the sale was in favor of the R5 who is the wife of the R3. No notice for the said board meeting was received by the P1. Since the R2 was trying to sell the prime property of the Company for a low sum, the P1 has issued a Press Advertisement in a vernacular newspaper on 12.04.2006 through her advocate. Certain persons who had paid money for shares were complained to the police authorities and they have issued two advertisements on 23.01.2007 and 25.01.2007 inviting complaints and this would disclose the prospective purchasers have been notified about the fraud that was in offing. But ignoring the fraud, the R6 and R7 registered the sale deed executed by the R2 in respect of the prime land of the Company for a sum of Rs. 21,22,500/-, The value as on the said date was Rs. 1500/- per sq ft whereas the R2 has sold the land for Rs.700/- per sq ft. An offer was also received from a person in the city for Rs. 30,00,000/- and the land was sold to lesser than the purchase price. The prime land being the major part of the company's assets, the sale of it would amount to sale of undertaking which requires approval in a general meeting and the said sale of land is null and void as per section 293 of the Companies Act, 1956.
- The R2 and R4 was appointed on 30.09.2000 and their appointment is invalid in terms of section 255, 256 and 257 of the Companies Act, 1956

and even according to the Article of the Company, they should hold the office only for three years. The R2 and R4 ought to have retired and they could not hold the office beyond 30.09.2004. While so the selling the prime property would clearly show that the sales hit by section 263 of the Companies Act, 1956 and the R2 has no authority as per law to make such a sale. The R2 and R4 has not applied for DIN No. whereas the P1 alone has applied for DIN No.

- Both the sales of land are fraudulent and it is hit by section 531(A) of the Companies Act, 1956. Besides the Company was not in function during the years and the shareholders were kept completely in dark. The Respondents wantonly avoided convening the AGMs for the last five years. The profit of sale ought to have come to the Company whereas it was siphoned by the Respondents.
- By virtue of previous petition, the CLB has appointed an observer for the 7th AGM held on 04.06.2007 and in the said meeting the petitioners were not given any right to address certain matters. Two resolutions were slated for discussions and those resolutions were passed without any discussion. The husband of the R2 threatened the shareholders and he had informed that they were willing to return the share amount. The request of the shareholders to return their share amount was not considered by the Managing Director and other directors and it was also not addressed in the subsequent board meeting.

- According to the Indian Stamp Act the registration charges are to be borne by the purchaser, whereas the sale of prime property of the Company, the registration expenses were borne by the Company and an amount of Rs. 26000/- was booked in the accounts of the Company. Likewise a bore well was sunk in the year 2001 in the land purchased where as it is shown in the accounts of the Company that it was made in the year 2006 and an amount of Rs. 52000/- was booked in the accounts instead of the actual amount of Rs. 26,400/-
 - The company is functioning in the premises of the firm which was dissolved and an amount of Rs. 1150/- was paid towards rent and out of the total amount, Rs. 6 lakhs was advanced to purchase the land for the company. Though the 7th AGM was convened, no previous general meeting except the EGM was held in the company. In the same manner no board meetings were convened by the Company except a board meeting held in the year 2002 for which the petitioner was invited.
3. The R1, R2 and R4 filed their counter and written arguments and the brief averments made therein are:
- The adjudication order of 05.02.2008 made in CP 51/2007 as well as in CP No. 11/2008 would reveal that it was not a case of withdrawal of CP 51/2007 with liberty to file a fresh CP. Two separate company petitions arising from the same set of facts were filed with one overlapping prayer.

Thus between 05.02.2008 and 23.04.2008 there were two company petitions on the same pleaded facts. The statement that the first company petition was withdrawn on technical grounds is not borne out from the adjudications. The filing of second petition on the same pleaded facts is a clear case of abuse of process of court.

- The allegation that the prime property was sold at a lesser price is emanating from two documents (i) the minutes of a meeting dated 30.03.2000 of the partnership firm M/s. Arunodhaya Enterprises and (2) the sale deed dated 14.07.2000. the P1 is the party to the sale deed dated 14.07.2000 by which the company acquired the property and wherein the consideration for purchase is recorded at Rs. 9,85,000/-. The P1 has represented the company for negotiation and now the P1 is estopped from claiming that the sum paid was not Rs. 9.85,000/- but Rs. 24.20,000/-. If that was true, the P1 is guilty of undervaluing the property to evade stamp duty under the Indian Stamp Act, 1899 and also to evade proper registration fee under the Indian Registration Act, 1908. Therefore, she has no business to claim the reliefs as prayed.
- The property admeasuring 3032 sq. ft. was purchased by the P1 before the incorporation of the Company and the agreement to purchase was entered into by the P1. If the property has been purchased for the company, it amounts to pre incorporation contract and the same ought to have reduced in writing in the Articles of Association of the company at

the time of incorporation. The P1 did not state anything in the statement in lieu of prospectus that the land was purchased for the purpose of the Company and also did not state any pre incorporation contract in the statement in lieu of prospectus. The payments made by the partnership firm cannot be construed as the payment made by the Company unless there is an express acceptance of any pre-incorporation contract as required under Specific Relief Act, 1963. Pre incorporated contracts are binding on the persons who make the contracts even though the same may not be binding on the company when it is incorporated unless the company adopts a contract or enters into fresh contract. The cost attributable to the company is Rs. 9.85,400/- plus the registration and stamp duty. Any additional payments that may have been paid from the account of the partnership firm would not necessary bind the R1 company, though it may bind the partners of the firm and even it could not be subject matter of a petition filed under section 397 and 398 in which the paramount interest of the company is taken care.

- It is a settled principle of law that a registered document always get preference over an unregistered document. A registered sale deed will always prevail over an unregistered agreement and section 91 of the Indian Evidence Act, 1972 support the same. The sale consideration was agreed and fixed at Rs. 9,85,400/- . In view of this the allegation that the land was sold for less than the cost of acquisition is not made out.

- The business of the Company is to deal with real estate. In accordance with the first 2 main objects of the company, the Managing Director of the company was fully empowered by the Articles to exercise all powers and to do all things that the company was authorized to do.
- The sale of mere asset or property which is held by the company as stock in trade will not be sale of an undertaking. In the present case the immovable properties held by the company were held as stock in trade. Therefore, the provisions of section 293(1)(a) would not be attracted. By virtue of articles of association, the managing director was fully empowered to alienate the land belonging to the company in favour of third party and no resolution was expressly required in this behalf.
- The first company petition was filed only on 21.05.2007 wherein the sale made on 04.08.2006 was challenged after more than nine and half months after the execution of sale deed. Thus by the petition in 2007, the petitioners are seeking to challenge through the back door what they cannot challenge outright due to the limitation imposed by section 402(f).
- There was no practice of giving premium for any purchase at the time of purchase of land for the Company and the averment that the premium amount has been paid is an afterthought and it has been made only to show that they have paid share application money and get shares in future.

- The R2 and R4 were appointed as directors when the P1 was the managing director of the Company. They have been appointed on 30.09.2000 and since no agenda was included for their appointment the said AGM was adjourned and held on 17.10.2001. In the said AGM the R2 and R4 were appointed for life and the said Form 32 intimating the appointment to ROC signed by none other than the P1.
- The R2 was appointed for life in the AGM held on 17.10.2001 and the Form 32 was filed by the P1. Though the appointment of R2 was made in violation of the Articles of Association, the said error was rectified in the AGM held on 17.10.2001 and the P1 who is party to the said appointment has no locus standi to raise the issue belatedly. The R2 was appointed as Managing Director in the EGM held on 16.12.2002 and therefore it is valid. A managing director is also a director of the company. An appointment by the company in general meeting as managing director implies the appointment of that person as a director also. There is no requirement in law that a person must be appointed as director first and managing director subsequently. If a person is appointed as managing director by the company in general meeting, it subsumes within itself the proposition that such person is also appointed as a director.
- The purchase of land for the company created litigation in the company and no one will come to purchase the property of a company which is under litigation. The 1st AGM was announced to be conducted on

17.09.2001, however, due to the litigation and for the appointment of directors the same was adjourned to 17.10.2001. This fact is suppressed by the petitioners.

- The P1 has filed the statutory report on 31.10.2001 on the basis of receipt and payments and the balance sheets for the year 2001 and 2002 were prepared by the P1. Since the R2 was appointed as Managing Director, the P1 has not cooperated with the R2, therefore the balance sheet for the year ending 31.03.2001 and 31.03.2002 prepared by the P1 were signed by the R2 in the capacity of MD. If there are any manipulations in the balance sheets, the P1 alone would be responsible as they same were prepared on the basis of the documents furnished by her to the auditor and it was only signed by the R2. The P1 made contrary statements in the petition with regard to the balance sheets. It is the P1 who wrote a letter to the auditor on 26.10.2002 narrating all the actual circumstances and stating that the other directors including R2 had secured all the account books even prior to 01.05.2002. The P1 is not a managing director and she has challenged the financials for the year 2001-02 in the company petition in the year 2007 more than five years later. The P1 never wrote to the company raising the slightest demur as to the balance sheets not only for 2002-02 but also for subsequent years. However, in the petition filed in the year 2007, she was able to prepare a so called real balance

sheet without any documents. The said submissions of P1 would prove the laches.

- The share application money was collected by the petitioners and the share certificates were not issued by them. Further, it is a bald allegation and no proof has been submitted by the petitioners.
- Before incorporation of the Company, a reconstituted firm viz M/s. Arunodhaya Enterprises was functioning and it was decided that the said partnership firm would cooperate with the Company at the initial stage. Since the said partnership firm was mismanaged and the husband of the P1 siphoned money from the partnership firm, he was asked to show the accounts of the firm. The husband of the P1 failed to show the accounts and it was discussed in many of the meetings of the said firm and on 07.02.2002, the husband of the P1 submitted some accounts, but not handed over the cash in hand of Rs. 6,77,846.55, to the temporary caretaker of the firm who is the husband of the R2. The said meeting was attended by the husband of the P1 and he has signed the minutes recorded on the said date.
- The P1 and her husband issued a legal notice on 17.05.2002 to the partners of the firm and invoked the arbitration clause of the partnership deed. The P1 voluntarily resigned from the post of Managing Director which was written by her husband and immediately after her resignation, filed a suit in OS No. 1064/2002 before the Subordinate Judge,

Tiruchirappalli stating that the resignation was forcibly obtained from her and the said civil suit is still pending for disposal. Further, the Company has not relieved her immediately after her resignation whereas she has been informed that she should hand over the accounts of the Company and then only her resignation would be accepted.

- It was the P1 in order to create confusion in the mind of shareholders setup some individual shareholders to send greeting letters to the R2 and on the said date the R2 was not the managing director. As the accounts were to be handed over by the P1, the R2 has written letter to the individuals explaining her position which is not bad in law. Since it was informed to the company that the P1 is indulging in filing of suits/petitions, caveat has been filed on behalf of the R2 by an advocate.
- The submissions of the P1 that she has prepared a balance sheet with another auditor would show that she has not submitted the entire accounts of the Company and she holds it. The R2 has signed the balance sheets prepared by the P1 in the capacity of MD. Though she has made allegations against the auditor, he has not been made party to the petition.
- The Company has not received any notice from the Sale Tax Authorities and the P1 has stated that she has sent the photo copies of the letters to the auditor and has not submitted any proof to that effect. Since the P1 has not informed the company, she would be held responsible for the said lapse.

- The land at Puthukudi South village is about 2.5 Km away from the National Highway as against the comparison with reference to a property abetting to NH and therefore the comparison is not proper. The P1 has not submitted any proof of making payment of Rs. 1,05,850/- and the account from which it has been paid also not mentioned. The fact that no action has been initiated nor contemplated ever since 2001 to recover the money itself stands testimony to the fact that no such amount has been paid and it is only an afterthought. The sale deed was executed only with proper authority and the approval of the board.
- The petitioner instigated some of the shareholders to give a complaint and made every arrangement to bring the news in the local newspapers. The subscription towards shares was collected by none other than the P1 when she was the managing director of the Company and subsequently instigated others to file complaint against the respondents for the misdeed done by herself.
- The registration of sale was completed only after the intervention of the High Court and initial purchase of the property landed the company in litigation. When the property of the company is under litigation, no prudent person would come to purchase the property. After a marathon effort, the Respondents were able to identify the 6th and 7th Respondents and the said respondents purchased the property of the Company. Since

the company has obtained the shareholders approval for the sale of the property, the provisions of section 293 has not been violated.

- The R2 and R4 were appointed as directors for life in the AGM held on 17.10.2001 and they need not retire by rotation. Their appointment is valid and it has been made by the shareholders. Therefore, their appointment is not struck down by the provisions of section 255 of the Companies Act, 1956.
- The P1 has applied for the DIN without any authority of the board. The R2 has also applied for DIN and it was further pursued. The respondents are ever involved in fighting with the vexatious litigations instituted by the petitioners in various courts and they are not in a position to contribute more to the company. All these actions have been taken by the petitioners only to bring the affairs of the company to grinding halt and for their self-enrichment.
- Section 531A of the Companies Act, 1956 is not applicable to the present petition as the same only would be applicable only when the winding up petition is filed or the company itself passed any resolution for voluntary winding up. The petitioners cannot invoke section 531A of the Companies Act, 1956 on the premise that there would be a winding up order under section 397. Further section 531 A would apply only as against the liquidator not in rem.

- The AGM was convened after issuing notices to all the shareholders including the petitioners. But the petitioners have not chosen to attend the meetings. The 7th AGM was convened as per the direction of the CLB and the observer has also filed his report before the Board. The P1 has collected the share application money from the persons and so far she has not clearly stated that to whom the certificates have not been issued. The amount invested in the shares cannot be returned to the shareholders. The shareholders would get back their investment only on transfer of their shares to others or after winding up of the Company, the balance would be distributed to the shareholders. The consideration received from the sale of the property of the company is kept in a separate bank account and it has not been utilized for the purpose of litigation except one payment made to Counsel who was appeared for the R1 Company. The respondents spent their own money for the vexatious petition filed by the petitioners. The observer has not pointed out anything in his report about not allowing the petitioners to make any grievances in the AGM. The P1 has started to submit something after rendering vote of thanks for the purpose of recording the same in the observer's report and therefore it was answered that the meeting is over and the same would be dealt in the next meeting.
- The alleged stamp duty paid by the Company is not the stamp duty whereas it was the fee paid to the ROC. Therefore the submission in

respect of applicability of Indian Stamp Act is not substantiated. The balance sheet as at 31.03.2001 and 31.03.2002 do not contain any information about the borewell and the same has been shown as asset only in the balance sheet as at 31.03.2002. This act alone would show that the petitioners have not approached the Tribunal with clean hands. One Mrs. Suguna, one of the managing partner of the firm has been issued with a power to receive the rent from the Company and the rent is being paid to the power holder by the company regularly. Since the P1 has not cooperated as assured, the accounts were prepared on the basis of the papers given by her to the auditor and the P1 is alone responsible to clarify about the advance given by the company.

- The petitioners have filed these vexatious petitions with an aim that the amount lying in the bank account should not reach to the shareholders. The provisions of section 274(1)(g) is not applicable to the present petition as the AGM was convened and filed the annual accounts. The said section cannot be used to disqualify the directors from the existing company, but can only be used to disqualify the directors of the defaulting public company from becoming director in any other public company. The said provisions will equally apply to the P1 since the directorship for life is not recognized under 1956 Act or thereafter. The said provision ended with the Companies Act, 1913. Therefore, the P1 is also liable to be disqualified under section 274(1)(g) of the Companies

Act. 1956. The company has not collected any deposits and there was no default in repayment. There is no failure of paying the dividend as the same has not been declared so far. Thus the section 274(1)(g) is not applicable to these proceedings and the said prayer is also not supported by any pleadings.

- The respondents vehemently opposed the earlier petition on maintainability of the petition and the CLB has ordered the petitioners to file fresh petition with valid consents. However, the petitioners filed the fresh petition including new averments which are absent in the earlier petition. The petitioners have not approached the Tribunal with clean hands and therefore the petition is liable to be dismissed.
- The Tribunal is first and foremost a court of equity. Therefore, the person who seeks equity must do equity. The P1 who has consciously abetted the under valuation of consideration for the sake of avoiding stamp duty, now approaches this Tribunal under different legislation to complain of under valuation in respect of sale transactions of the company.

The learned Counsel for R1, R2 and R4 while reiterating the averments submitted that the petition filed by the petitioners is hit by laches, lacks bonafide and cannot be maintained on merits. The P1 is guilty of not discharging her own duties as director of the company. The acts complained

of do not constitute oppression in any manner and she was in the board and has not taken any steps in all these years. She is trying to use the vast power of this Tribunal to enforce her will on the company which is not only unfair but also abuse of process of court. The learned Counsel while praying to dismiss the petition, relied on the following case laws in support of his submissions:

- **Maharani Lalita Raja Lakshmi Vs Indian Motor Company Limited (AIR 1962 Cal 127 (1962))** – for the proposition that the case of the petitioners must stand or fall on its own legs. It cannot depend on the weakness of the defence.
- **Achutha Pai Vs ROC (1966) 36 Com Cas 598 (Ker)** – for the proposition that the services of managing director or a manager cannot be terminated by mere sending of a resignation but must be duly accepted by the company and he should be relieved on his duties and responsibilities.
- **Ashok Kumar & others Vs Shingal Land & Finance Private Limited (1995) 82 Comp Cas 430 (Del)** – for the proposition that the managing director had been authorized to carry on the management of and the affairs of the company on behalf of the board, and that unless and until the board of directors had restrained the managing director from performing any particular act or function in the management of

the business of the company, the vast powers given to the managing director to manage the affairs of the company would include disposing of and selling properties of the company.

- **Anugraha Jewelers Limited and another Vs KRS Mani & others (2002) 111 Comp Cas 501 (Mad)** – for the proposition that a petition under section 397/398 is only a procedural device for the court to do justice to a company controlled by miscreant directors or shareholders. It was evolved so that the justice could be done for the benefit of the company. Whoever came forward to start the proceedings must be doing so for the benefit of the company and not for some other purpose. The court is indeed entitled to look at the conduct of the plaintiff in a minority shareholders' action to satisfy itself that he is a proper person to bring the action on behalf of the company and that the company itself will benefit. A particular plaintiff may not be a proper person, because his conduct is tainted in some way which, under rules of equity, may bar relief. He may not have come with clean hands or might be guilty of delay.
- **Srikanta Datt Narasihharaja Wadiyar Vs Sri Venkateswara Real Estate Enterprises (Private) Limited (MANU/KA/0271/1989)** – for the proposition that a person coming to the Tribunal for equitable relief must come with clean hands.

4. The R5 has filed her counter and inter-alia stated that she was the bonafide purchaser of the land at Puthukudi south village. The said land was sold to her for almost more than one and one third of its purchase price of the R1. Therefore, there is no loss to the R1 Company. The comparison of price is made with other land which is situated abetting the four way road in the Cuddalore-Nagapattinam high way whereas the land purchased by her is situated 2.50 KM away from the high way. Though the R5 is a bonafide purchaser, she has not been able to put the land in use due to the litigation. She has prayed to dismiss the allegation made against her.

5. The R6 and R7 have filed their counter and inter alia stated that they are the bonafide purchasers of the said land situated at Devedhanam village, Trichy municipality. The title of the said land was not clear and only on the intervention of the High Court the registration was done. The land was purchased for Rs. 9,85,000/- as per the sale deed executed by M/s. New century Book House Private Limited but not for Rs. 24.20 lakhs. The land was originally belongs to a temple and it changed hands and at the time of purchase by R6 and R7 it was with the company and the same was purchased as per the prevailing market rates. The P1 has not produced any proof to show as to who was the person prepared to buy the property for Rs. 30 lakhs. The submissions of the P1 in this regard are baseless. Due to this vexatious litigation R6 and R7 could not

develop the land and they were put to great hardship. Therefore, the R6 and R7 prayed to dismiss the petition.

6. The petitioners have filed rejoinder and written arguments and inter-alia made certain averments and they are:

- The purchase of the land by the partnership firm was known to all the partners. Just because the pre incorporation contract was not recorded in the Statement in lieu of prospectus, it won't erase the fact that the agreement was entered for the purpose of purchase of property for the proposed company and the payments were made by way of DD by the P1 and the same was also recorded in the sale deed. The respondents are the partners of the firm and they are aware that the premium has been paid to purchase the land. It could be verified from statement of the respondents that an amount of Rs. 14,34,600/- paid over and above the sale price mentioned in the sale deed towards premium and therefore they are estopped from saying that there is no practice paying premium for purchase of land.
- It is false to say that the husband of P1 is managing the affairs of the Company and the P1 is managing director as name sake. The husband of R2 and R4 were also operating the partnership firm. Once the company was incorporated, the accounts of the firm and the company constitute a single block practically. The surplus of the partnership firm was used for

the company's incorporation and the money has not been siphoned by the husband of the P1. The Respondents failed to attach any documents and they have suppressed the facts only to make baseless allegations against P1.

- The R2 and R4 were appointed as Directors only in the board meeting held on 30.09.2000 and they have not been appointed directors for life. The Form 32 filed by the P1 would show that they have not been appointed as directors for life. The AGM was actually convened on 17.09.2001 and it was not adjourned to 17.10.2001. Non-mentioning of the adjourned AGM in the documents filed by the respondents with the ROC and the documents obtained from the ROC would show that the AGM on 17.10.2001 has never taken place. The appointment of R2 as Managing Director lacks legs to stand as her term as Director had lapsed.
- The statutory report has been prepared and filed only for 6 months and the other accounts are forged and cooked up and filed to suit the convenience of the respondents. It is false that the balance sheet as at 31.03.2001 and 31.03.2002 were prepared by the P1 and they were signed only by the R2 in the capacity of MD, whereas all the documents were prepared and filed by R2 only.
- The share application money was collected not only by P1 but also by other directors. Other illegal activities of the respondents had created a situation that further share certificates could not be issued and the money

collected and accounts thereon were all handed over to the husband of the R2 on 01.05.2002.

- As per the accounts of the partnership firm, out of Rs. 6,77,846.55 and amount of Rs. 6,75,000/- was used to incorporate the company and remaining was used to pay back to the depositors. Since the company was incorporated from the fund of the partnership firm, the accounts of the company and the accounts of the firm have to be dealt with cogently in an interlinked manner. The OS No. 1064/2002 was renumbered as OS 2185/2004 and the same is pending before the Principal District Munisff, Tiruchirappalli and the respondents have not filed any written statement so far.
- The P1 has handed over all the accounts and documents of other movable and immovable properties to the husband of R2 with due acknowledgement. Therefore there is no merit in the submissions that the P1 has not submitted all the accounts. The auditor has not been made as party to the proceeding as the petitioners do not want to extend the area of confrontation without any necessity. Further, the auditor has to oblige to the respondents. Since no specific allegation has been made on the auditor and therefore he has not been added as a party to the proceeding. The respondents have sidelined other partners of the firm and they have fraudulently operated the affairs of the firm.

- The prime property of the company was disposed by the respondents for a lower price and the respondents chose the respondents 6 and 7 only to get illegal benefits out of such sale. The value of the property has never been lowered and it is increasing day by day. The money that is with the bank is only the Cheque and DD amount and Rs. 3,77,200/- forming part of the sale proceeds has not been accounted by the respondents.
- Mrs. Suguna is not the Managing Partner and no authorization has been given to her to collect the rent from the company. The P1 has nothing to do with the advance of Rs. 6 lakhs paid by the Company and it is only the respondents who have made the payment.
- The respondents have not filed the annual accounts with ROC in law full manner. The accounts for the year 2002 to 2006 have not been filed with the ROC. The documents were filed belatedly only to escape from the clutches of the provisions of section 271(1)(g) of the Companies Act, 1956.
- The provisions of Section 15 and 19 of the Specific Relief Act, 1962 is not applicable to the present petition which has been filed for oppression and mismanagement. The payments to purchase the land were made from the petitioner's account were treated as part of consideration in the registered deed which is nothing but undisputed fact that the R1 company had accepted the contract. The provisions of Specific Relief Act, 1962 is in support of the stand of the petitioners and not the respondents.

- The Respondents harped upon the section 91 and 92 of the Evidence Act, 1872 to the effect that the consideration mentioned in the registered sale deed alone should be reckoned. The said provisions applied to the parties to the documents viz the R1, Petitioner and New Century Book Houses Private Limited. The Respondents have not denied the existence of the minutes of M/s. Arunodhaya Enterprises which is third party and not a shareholder in the Company. As such the evidence emanating from the Firm is admissible as evidence in terms of section 99 of the Evidence Act.
- The sale of vacant land is covered under the caption “other objects” therefore the contention of the Respondents that the MOA only talks about “Dwelling Units, non-dwelling units which is nothing but sale of buildings and it cannot be construed as sale of vacant land which is not covered under the main objects. When the sale of vacant land is mentioned in the other objects, the Managing Director has no authority to sell the same without the approval in a general meeting.
- The limitation point has not been raised by the Respondents in their counter and they cannot agitate the same without making any pleadings. The land of the property at Trichy was sold on 09.04.2007 and the earlier petition was filed on 23.05.2007 with the limitation period. In respect of the sale deed dated 04.08.2006, the certified copy was obtained on 27.03.2007 and the same has also been challenged within three months from the date of knowledge. Section 402(f) empowers the Tribunal

besides the enormous power available under section 397 and 398 to set aside the transfer and it is a fraudulent preference according to the provisions of section 54 of the Provincial Insolvency Act, 1920. The transfer of property to the R5, R6 and R7 are fraudulent transfers and they are not innocent purchasers.

The learned Counsel for the petitioner relied on the following case laws in support of his submissions:

- **Pradeep Kumar Goil and another Vs Sarveshwar Infrastructur P Limited and others (2017) 200 Comp Case 26 (NCLT)** – for the proposition that the board of directors have no power to appoint directors and such appointment are to be set aside.
- **Durofiled Ltd Vs Johnny Mathew – 2005 Comp Cas vol 125 – 845** – for the proposition that the Resjudicata is applicable only if the matter earlier decided finally on merits.
- **A Dhoddiah Chettiar Vs Madukkarai (Niligris) states (1974) 1 MLJ 146** – for the proposition that if the terms of any transfer reduced to writing are in dispute between a stranger to a document and a party to it or his representative –in-interest, the restriction imposed by section 92 in regard to the exculpation of evidence or oral agreement is inapplicable.

- **Sushil Suri Vs Central Bureau of Investigation and another – (2011) 5 SCC 708** – for the proposition that each case depends on its own facts and a close similarity between one case and another is not enough because either a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not all decisive.

7. In reply, the learned Counsel for R1, R2 and R4 submitted that the learned Counsel for the petitioner enlarged the scope of his original arguments and relied further on the following case laws:

- **Krishi Utpadan Mandi Samiti, Sahaswan Vs Bipin Kumar and another – (2204) 2 SSC 282** – for the proposition that it precludes a party from leading evidence contrary to the terms of a written document. Parties who undervalue their document for payment of stamp duty precluded from claiming that their own document does not reflect the correct market value.
- **Shanti Budhiya Vesta Patel and others Vs Nirmala Jayaprakash Tiwari and others – (MANU/SC/0276/2010)** – for the proposition that it is a plain and basic rule of pleadings that in order to make out a case of fraud or coercion there must be a) an express allegations of coercion or

fraud and b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. In other words, if coercion or fraud is alleged, it must be set with full particulars.

➤ **Bishundeo Narain and another Vs Seogeni Rai & Jagernath – AIR 1951 SC 280 1951 SCR 548** – for the proposition that general allegations are insufficient even to amount an averment of fraud or which any court ought to take notice however strong the language in which are couched may be, and the same applied to undue influence and coercion.

8. Heard. Perused the pleadings and written arguments of both the sides.
9. After considering the above, the crux of the issues for consideration is:
 - a) Whether the prime property of the company was sold to R6 and R7 for lesser value than the original value for which it was purchased?
 - b) Whether the property situated at Pudukkudi South Village, Thanjavur district has been sold by undervaluing the same comparing with the similarly situated land?
 - c) Whether the R2 to R4 are disqualified under section 274(1)(g) of the Companies Act, 1956?
 - d) Whether the R2's appointment as director is valid and whether she is empowered to sell the property of the Company?

Issue No. 1: It is on record that the P1 had purchased the prime property with defects and only on the intervention of the High Court, concerned authorities have registered the sale deed in the name of the Company. Therefore there is no doubt that the purchase of property was commenced only with litigation. The P1 contended that she has given advertisements on 12.04.2006 in the newspapers cautioning prospective purchasers and she has not raised the issue with the Company and she has not submitted any documents to prove the same. It is also on record that she is continuing as director of the Company and instead of giving advertisements she could have approached the company in this regard or could have filed civil suits restraining the company from selling the property whereas she has failed to do so. The contention of R6 and R7 is that they are the bonafide purchasers and they are not aware of the alleged disputes between the shareholders in the Company and the paper publication made by P1 was one year before. Since, the property was registered in the name of the Company after the intervention of the High Court, R6 and R7 have purchased the same. But they could not make use of it and develop due to the present pending proceedings before this Tribunal. The learned Counsel for R1, R2 and R4 contended that P1 is party to the sale deed dated 14.07.2000 and the value mentioned in the sale deed is Rs. 9,85,000/- . While relying on Specific Relief Act, 1963 and Indian Evidence Act, 1872, the learned Counsel for the R1, R2 and R4 contended that P1 had agreed and fixed the consideration at Rs 9,85,400/- in the said document itself and therefore the allegation that the land

has been sold for lesser value is not substantiated. As per the sale deed dated 14.07.2000, the sale consideration was Rs. 9,85,400/- which is the registered value and subsequently the same property was purchased by the R6 and R7 for Rs. 21,22,500/- which is more than the registered value. The learned Counsel for R1, R2 and R4 rightly contended that the registered value of consideration alone has to be taken in to consideration and I hold that P1 being the Director of the Company failed to attend her duties in this regard. The case law **Krishi Utpadan Mandi Samiti, Sahaswan Vs Bipin Kumar and another** referred by the learned Counsel for R1 and R2 and R4 squarely applies for this case and therefore I answer the issue no 1 in negative.

Issue No.2: The R5 has contended that the land at Pudukudi South Village is situated nearly 2.5 KM inside in a remote village from the National High way and any stretch of imagination it would not bring the value of land abetting to the National High Way. The learned Counsel for R1, R2 and R4 has brought to the notice that the survey no's of the land of the Pudukudi South village and the other compared property are totally different. Therefore, considering the location of the lands, I hold that petitioners have not substantiated that the said land was sold for a lesser value and therefore, I answer the issue No. 2 is also in negative.

Issue No. 3: The learned Counsel for the petitioners contended that the R2 and R4 are disqualified under section 274(1)(g) of the Companies Act, 1956. The

learned Counsel for R1, R2 and R4 contended that the provisions of section 274(1)(g) of the Act is not applicable to the present case in hand. On close scrutiny, it is observed that the provisions of section 274(1)(g) of the Companies Act, cannot be used to disqualify the directors from the existing company, but can only be used to disqualify the directors of the defaulting company from becoming directors in any other public company. The learned Counsel for R1, R2 and R4 rightly brought the notice, the provisions of section 274(1)(g) of the Companies Act, 1956 and its applicability. It is on record that the Company has filed the balance sheets as at 31.03.2001 and 31.03.2002 and due to the present litigation could not conduct any AGM except the AGM conducted as per the orders of the CLB. If it is taken that the provisions of section 274(1)(g) is applicable, it is equally applicable to the P1 who is still continuing as director of the Company. In view of the legal provisions I am inclined to answer this issue in negative.

Issue No. 4: The petitioners contended that the R2 to R4 were appointed in a board meeting held on 30.09.2000 for which the board of directors has no locus standi or authority to appoint the directors as per the AOA. The illegal appointments of the R2 to R4 led to further litigations. The R2 was appointed as Managing Director in the EGM held on 16.12.2002 and this appointment is null and void as her initial appointment as director itself is invalid and not enforceable. Whereas the learned Counsel for the R1 and R2 and R4 contended

that the R2 was appointed in the EGM held on 16.12.2002 and the said meeting was not attended by the P1. It is his contention that the person who has not attended the meeting is estopped from making allegation. Further, he contended that a person cannot be appointed as Managing Director without appointing him as director and the present case even it is taken that R2 has not been appointed as Director, since she has been appointed as Managing Director on 16.12.2002, it is deemed that the R2 has also been appointed as Director. It is on record that the P1 herself admitted that R2 has been appointed as Managing Director on 16.12.2002. Article 11 empowers to appoint additional directors for certain period as per Article 9. It is on record that the petitioners have contended that the R2 to R4 were appointed for 3 years and therefore, now they cannot contend that they have not been appointed as directors. R1, R2 and R4 have contended that their position as directors has been regularized in the adjourned AGM held on 17.10.2001. In case the P1 is aggrieved on the said appointment, either she should have approached the company to nullify the said appointment or should have approached any court seeking an order to declare that the appointment of R2 and R4 is null and void. But, instead the petitioners have filed the present petition in the year 2007 and questioning the very appointment of MD made during the year 2002 which is nothing but abuse of process of law. With regard to sale of property, the petitioners contended that the MD is not empowered to sell the property on her own without taking the permission in a general body meeting, whereas the contention of R1, R2 and R4 is that the Managing

Director is empowered to sell the property without any prior permission. Clause 15 of Articles of Association of the Company empowers the MD to exercise all such powers and do all things as authorized by its memorandum of association or by statute. The issue decided in the referred case i.e. **Ashok Kumar & others Vs Shingal Land & Finance Private Limited**, squarely applies to the present case as the board of directors has not restrained the R2 from performing any particular act or function in the management of the business of the company. Therefore, it can be safely said that the R2 is empowered to sell the property particularly when the company itself is in the business of real estate and for every genuine sale transaction she need not obtain the permission of the shareholders. In view of my above observations this issue is answered in affirmative.

10. It is the duty of the Tribunal to see the paramount interest of the Company and the disputes between the parties should not affect the functioning of the Company. The case laws referred by the learned Counsel for R1, R2 and R4 squarely apply to the present case in hand whereas the case laws referred by the learned Counsel for the petitioners are not supporting, for the reasons that the facts and circumstances of the present case are otherwise. Since the petitioners have failed to make out any case of oppression and mismanagement in the affairs of the R1 Company, the petition is liable to be dismissed and accordingly the petition is dismissed. No orders as to costs.


K. Anantha Padmanabha Swamy
Member (Judicial)