

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI

**TCP 127/2016**  
(No.72/2013)

Under Sections 397, 398, 402 & 406 of the Companies Act, 1956

In the matter of

**R.Jeyapaal**

**Vs.**

**M/s.Arjuna Engineering Private Limited & 2 others**

*Order delivered on 11<sup>th</sup> of September, 2017*

CORAM

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

*For Petitioner : M/s.S.Sathya Narayanan,  
G.Prabhu, P.P.Vikram & S.Kartik*  
*For Respondents : M/s. P. Arularasu,  
P.Kothandaraman & T.Marimuthu*

**ORDER**

Per: S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

M/s. The Arjuna Engineering Private Limited,  
(hereinafter called as the Company) was incorporated  
on 22/07/2009 as a Private Company limited by  
shares in the State of Tamil Nadu and the Corporate  
Identity Number is U45400TN2009PTC072352. The

Registered Office of the Company is situated at No.23  
1<sup>st</sup> Street Samayapuram Nagar, Opp. To Porur Lake  
Porur, Chennai 600 116.

**The Main Objects of the Company are:**

- To take over the Partnership Firm  
Arjuna Engineering, continue and  
complete the existing contracts of the  
firm.
- To carry on the business of  
electrical/mechanical/civil engineering  
works, etc.

**The Capital Structure of the Company is as follows:**

The Authorized Share Capital of the Company is  
Rs.25,00,000/- (Rupees Twenty Five Lakh only) divided  
into Rs.2,50,000/- (Rupees two lakh fifty thousand  
only) equity shares of Rs.10/- (Rupees Ten only) each.


The Amount of Issued, Subscribed & Paid up  
Equity Capital is Rs.5,00,000/- (Rupees Five Lakh

only) divided into 50,000 (Fifty Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each.

The Petitioner is the Founder-Director and shareholder of the company and at present is holding 20,000 Equity Shares i.e. exactly 40% of the paid up capital.

The Company is the 1<sup>st</sup> Respondent and the particulars of the Company are furnished in the paragraph 1 above. The 2<sup>nd</sup> Respondent is a shareholder and Managing Director of the Company and holds the remaining 60% of the issued capital. The 3<sup>rd</sup> Respondent is a Director of the Company.

**The petitioner has submitted as follows:**

1. It was submitted that the 1<sup>st</sup> respondent company was incorporated in the year 2009 and the subscribers to the Memorandum of Association of the Company were Mr.Jeyapaal Ramadas and Mrs.Kamala Ramanujam, (the Petitioner and his Spouse). 

Subsequently the 2<sup>nd</sup> respondent was appointed as the Managing Director of the Company on 09/08/2009 and he continues to hold the post till date. The second promoters/ subscriber/ Director, Mrs.Kamala Ramanujam resigned from the Directorship of the 1<sup>st</sup> Respondent Company on 16/03/2010 and the 3<sup>rd</sup> Respondent was appointed as the director of the Company on the same date. As on the Date of filing the Petition, the Petitioner, 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent are directors of the 1<sup>st</sup> respondent company.

2. It was also submitted that as on the date of filing of this Petition, the Petitioner and the 2<sup>nd</sup> Respondent are the only shareholders of the Company each holding 40% and 60% of the paid up capital respectively.

3. It was also submitted that the promoters-directors of the company inducted the 2<sup>nd</sup> Respondent, a good friend of the Petitioner with adequate experience



in running engineering business, by offering him the position of Managing Director which the 2<sup>nd</sup> respondent accepted with full enthusiasm and was duly appointed as the Managing Director of the 1<sup>st</sup> Respondent company on 09.08.2009.

4. It was submitted that initially the 1<sup>st</sup> Respondent Company, M/s.Arjuna Engineering Private Limited prospered as a result of the harmonious efforts of the Petitioner along with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The respondent started inducting their close associates as employees in the company without consulting the Petitioner, which was unfair and prejudicial and lacks probity. The petitioner was kept away from the proceedings of the company and notices of the meetings were not sent to him. Being the Director and the Shareholder of the Company, the Petitioner has the right to receive notices for both Board Meeting and Annual General Meeting under

Section 286 and Section 172 of the Companies Act, 1956.

5. The Petitioner submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are mismanaging the Company and are not carrying out its affairs in the manner in which it ought to be carried out. The Petitioner notices that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are plundering and siphoning the funds of the Company, and have transferred a huge sum amounting to approximately Rs.88 lakh (Rupees eighty eight lakh only) in a series of transactions to M/s.Samana Engineering & Construction Private Limited (CIN-U70102UP2012PTC051986) without reasons from the Company's Bank Account in IDBI Bank, Chennai. The Petitioner being the Promoter-director of the 1<sup>st</sup> Respondent Company ought to have been informed about such transfer of funds but neither intimation nor any explanation was made to the petitioner. Details of the amounts transferred by the


2<sup>nd</sup> and 3<sup>rd</sup> Respondents from the Company's Bank Account are given below:

Details of Amount transferred from IDBI Bank, Branch-Greams Road, Chennai.

Date	Amount (Rs.)	Name of the Company
18/10/2012	2,00,000	Samana Engineering & Construction Private Ltd.
03/12/2012	2,00,000	Samana Engineering & Construction Private Ltd.
18/12/2012	4,00,000	Samana Engineering & Construction Private Ltd.
07/01/2013	30,00,000	Samana Engineering & Construction Private Ltd.
08/06/2013	15,00,000	Samana Engineering & Construction Private Ltd.
15/06/2013	10,00,000	Samana Engineering & Construction Private Ltd.
21/06/2013	25,00,000	Samana Engineering & Construction Private Ltd.
<b>Total</b>	<b>88,00,000</b>	

6. The petitioner submitted that the Respondents have incorporated Companies, M/s.SAMANA ENGINEERING & CONSTRUCTION PRIVATE LIMITED(CIN-U70102UP2012PTC051986), promoted by their close associates with similar objects to that of the 1<sup>st</sup> Respondent Company.

7. It was submitted that the 3<sup>rd</sup> respondent has been appointed as the Director of M/s.Samana Engineering & Construction Private Limited on 26/09/2012, but the 3<sup>rd</sup> respondent did not make necessary disclosures as required under the provisions of Section 305 of the Companies Act, 1956 to the 1<sup>st</sup> respondent company.

8. The petitioner further submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents utilized the siphoned funds of the 1<sup>st</sup> Respondent Company for incorporating and running the business of the companies floated by them. They have poached the 1<sup>st</sup> Respondent Company's customer database, market details and the potential business opportunities gained in their capacity as Managing Director and Director of the 1<sup>st</sup> Respondent Company for the benefit of the Companies floated by them and their associates by diverting corporate opportunities away from the 1<sup>st</sup> respondent company and also using the Company's facilities for the purpose of their 




competing business without proper authorization of the 1<sup>st</sup> respondent company. It has been submitted by the petitioner that the respondents were clearly abused their fiduciary positions and their conduct lacks probity towards the 1<sup>st</sup> respondent company.

9. The petitioner submitted that though the Company was consistently doing well, the 2<sup>nd</sup> respondent, being the Managing Director proposed the idea of shrinking costs by reducing the salary/remuneration of the Directors and Employees. However the salary of Respondents & their associate employees were reduced only by a token amount, the Petitioner's salary was substantially reduced. This is clearly an attempt to impoverish the petitioner and shows that the 2<sup>nd</sup> respondent acted in bad faith and his conduct has unfairly prejudiced the Petitioner's interest. It is against all principles of equity and natural justice.




10. The petitioner further submitted that according to the Company's policy, the Company bears the cost of residential accommodation of the Directors. Though the 1<sup>st</sup> Respondent Company paid rent for the residential accommodation of the Respondents, the rent for the residence occupied by the petitioner was not paid for the last 8 months. It turned out to be an agonizing situation for the Petitioner and caused great mental anguish to the petitioner, who received several warnings from his landlord to vacate the house.


11. The petitioner further submitted that the 1<sup>st</sup> respondent company has number of vehicles purchased for business purposes which are registered in the name of the petitioner in accordance with the policy of the Financing Company. It is alleged that one of the vehicles has been confiscated by the Tamil Nadu Police for transporting contra-banded articles as evidenced by the FIR No.334/13. The petitioner fears prosecution as the vehicle is registered in his name 

and apprehends that this is an attempt to tarnish his image and malign his flawless reputation.


12. It was submitted by the Petitioner that he fears that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents being foreigners, any wrong act done by them on behalf of the Board of Directors of the Company will put the Petitioner, who is one of the Directors of the Company, into litigation. And the Petitioner also fears that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent may seek refuge in their Country thus leaving the Petitioner to face all the legal consequences.

13. The petitioner has submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, have carried into effect a sinister, calculated, well-orchestrated and absolutely nefarious plan of ruining the reputation of the petitioner as well as the business of the company and to take full control of the Company wholly by dubious means. And in spite of the repeated cautioning of the petitioner, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents failed to correct themselves in financial dealings and continued their unethical 

actions in the Company which is affecting the growth and reputation of the Company badly.

14. The petitioner has submitted that the above narration would further establish the motive behind such harsh and burdensome conduct of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The acts of the respondents in mismanaging and siphoning of funds, diverting corporate opportunities, depriving the petitioner of his legitimate rights and tormenting the petitioner not only financially but also by assassinating his character. The Petitioner states that the intervention of this Hon'ble Board has therefore become necessary to protect the interest of the 1<sup>st</sup> respondent company, its shareholders and the petitioner. The petitioner stated that existing circumstances justify the winding-up of the company under just and equitable grounds, however, the winding up of the company will prejudice the interest of the petitioner and the company. 


## **15. The prayer of the petitioner:**

- ◆ To declare that the acts of the Respondents particularly the 2<sup>nd</sup> Respondent, which are oppressive and prejudicial to the interest of the Company and the Petitioner, as null and void.
- ◆ Direct an investigation to be conducted in the affairs of the 1<sup>st</sup> Respondent Company and to quantify the amounts siphoned off by the Respondents.
- ◆ To direct the 2<sup>nd</sup> respondent not to exercise any rights as the Managing Director of the Company
- ◆ To direct the 3<sup>rd</sup> respondent not to exercise any rights as Director of the Company.
- ◆ To impound the passport of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to prevent them from 



fleeing the country till the investigations are completed.

16. The petitioner further submitted that the act of oppression and mismanagement on the part of 2<sup>nd</sup> and 3<sup>rd</sup> respondents are serious, continuous and are completely against the interests of the 1<sup>st</sup> respondent company and its shareholders and the petitioner. It is in such circumstances that the petitioner is compelled to seek relief from the Hon'ble Board against the various acts of oppression and mismanagement by the respondents.

17. In the Rejoinder, petitioner has stated among the other things that the Organizational chart submitted by the respondent to petitioner is shown as Vice President in-charge of the Engineering Division and has stated that this shows untrue statements have been made by the respondents in their counter. The petitioner has rebutted that the 2<sup>nd</sup> respondent was invited by the petitioner for being appointed in the R1 



Company. The petitioner has stated that this is a clear contradiction with the statement made in the reply that the petitioner has no technical knowledge and assuming that he could not have suggested appointment of the 2<sup>nd</sup> respondent. The petitioner has once again reiterated the details of the loans given to M/s.Samana Engineering & Construction Private Limited and has questioned the statement that if the financial position of the company was so severe how could the company have given funds to M/s.Samana Engineering & Construction Private Limited and have alleged that the Managing Director of M/s.Samana Engineering & Construction Private Limited is a close relative of the 3<sup>rd</sup> respondent. The petitioner has also stated that the amount given as loan to M/s.Samana Engineering & Construction Private Limited was returned in a hurry only after the petition was filed against the respondents.

18. The petitioner has also stated that the salary cuts referred by the respondents are a ploy to put the petitioner in financial difficulties. As there was salary revision for the respondent within a few months without including the petitioner in such a revision. Petitioner has also questioned the role of the 3<sup>rd</sup> respondent as the name of the R3 does not appear in the organizational chart and as stated that the payment of salary to R3 is a form of diversion of funds. The petitioner has also contended that he had to take some time off due to his wife's illness and subsequent death. But otherwise he was attending to the Companies business with due devotion.

19. In the Sur Rejoinder filed by the respondent they have reiterated mostly the points already covered in their counter and have explained the reason for appointing Mr.Park as a Director in the Company.

20. The respondents have also referred to many of the purported actions of the petitioner to threaten

the respondents who are foreign nationals through harassment and illegal actions. The respondents have also denied that they had not paid the rent for the house occupied by the petitioner for 8 months and has stated that the R1 Company has paid the full rental charges.


21. In conclusion the respondents have sought to reiterate the plea to dismiss the petition with costs.

22. In the written arguments, the petitioner has also adduced some other grounds like that in the case of Mr.Park who is stated to be a Director is actually not a Director as Form 32 has not been filed within 30 days from the date of appointment as the Director. Otherwise, the petitioner have reiterated the same arguments and included some citations in support of their averments.


23. In the written arguments by the respondents they reiterated most of the statements made by them in the counter and Sur Rejoinder. Apart from rejoinder,

the fact that the Company has no immovable property and was not engaged in any production and manufacturing activity and the entire work of the company is to provide construction and electrical engineering services in Korean style and methods. They have denied the charges made by the petitioner relevant to the syphoning of funds of R1 Company and as stated that the loans were extended and were returned by way of regular banking channels only.

24. The main points of dispute in this case are that the respondents started inducting their close associates as employees in the Company without consulting the petitioner and that the petitioner was kept away from the proceedings of the Company and notice of the meeting were not send to him as a Director and shareholder of the Company.


25. This has been denied by the respondents vide para 4 of their reply wherein stated that all the local staff were recommended by the petitioner only 



and the appointment of the local staff would not have been possible without the knowledge of the petitioner. As respondent 2 could not have done so due to the language barrier. The respondents have also stated that the appointment of Mr.Park a Korean citizen was suggested by the petitioner himself which is evidenced by the letter sent by the petitioner to Mr.Park and on his invitation Mr.Park was cleared for the Visa to India and joined the R1 company. The petitioner has also denied this in his rejoinder wherein he has stated that since he did not know Mr.Park earlier he could not have suggested the name of Mr.Park to join the Company as a Director/employee. However, the petitioner has not specifically denied the fact of his having written the letters to Mr.Park. The petitioner has also stated in his rejoinder that the respondent No.3 is a relative of the 2<sup>nd</sup> respondent vide para 6.5. The petitioner has stated that the amount totaling Rs.88.00 lakhs was transferred to M/s.Samana Engineering & Construction Private Limited from the 




Company's Bank Account and has stated that the respondents have incorporated the company M/s.Samana Engineering & Construction Private Limited along with their close associates with similar objective with that of the 1<sup>st</sup> respondent company.

26. The respondents had stated that the contents of para No.3 of the petition is misleading and that the respondent was using the Korean language knowledge of the petitioner as a translator for his business. The 2<sup>nd</sup> respondent according to his submission had asked the petitioner to form a company to carry out the electrical work on behalf of the 2<sup>nd</sup> respondent with a condition that the petitioner should hand over the company and its shares to the 2<sup>nd</sup> respondent after he started residing in India. Since the R-2 didn't know English, the petitioner has taken 40% of the shares of the company without the knowledge of the II respondent. Among other things the respondent has stated that the petitioner has 

contributed nothing either by way of financial support or technical expertise.

27. Vide para 4, the 2<sup>nd</sup> respondent has denied the averments of petitioner in para 6 of the petition. He has stated that the petitioner ordered the HR's Staff of 1<sup>st</sup> Respondent Company to prepare and send documents of the visa application to the new Korean employees who joined the 1<sup>st</sup> respondent company and all the local staff were recommended by the petitioner only and has also stated that it was impossible to record anybody without the knowledge of the petitioner. They have also stated that all the notices of every meeting of the Company has been duly and continuously served on the petitioner without fail.

28. Vide para 5 of the reply, the respondents have denied the charge of mismanagement of the Company and have also denied contention of petitioner in para 6.5 is evidenced by the promissory note submitted by them and the amount has also been 


repaid by the said company. The respondents vide para 7 and 8 of their reply have denied the allegations made by petitioner as false and misleading and vide para 5 that the amount of funds transferred to M/s.Samana Engineering & Construction Private Limited was paid back later by the company which has also been accepted by the petitioner.

29. They have also stated that the petitioner was removed as a signatory for banking transactions as he acted against the interest of the company and he wanted to stay away from the affairs of the company. The respondents vide para 6 and 7 of the reply have denied that any one of the respondents are in any way related to the Directors of M/s.Samana Engineering & Construction Private Limited and vide para 8 have also denied the contents of para 6.8 of the petition and has stated that the charges of siphoning of funds of R1 Company are false and misleading.

30. In para 9 and 10 they have admitted that there was salary cut of the Directors to reduce the expenditure and that there was no bad faith on the part of the respondents. They also stated that the petitioner's salary was reduced as he came to office 5 days in a week only. They have denied the contents of para 6.10 of the petition and have stated that no warning was given by the landlord to the petitioner for vacation of the premises and it was vacated by the petitioner only to his full satisfaction. After the contractual period for the tenancy agreement of the R1 company and just before the expiry, the petitioner met the landlord and it was mutually agreed to extend the contract for 2 more months for which the petitioner paid the rental himself and subsequently he vacated the house. The respondents has stated that the R1 company did not receive the full amount as refund of the security deposit made by them due to the damage to the house which occurred during the period the petitioner was using the house.




31. In para 11 of the reply, the 2<sup>nd</sup> respondent has submitted that the contents of para 6.11 on the petition is false and have stated that the petitioner can transfer ownership of the vehicle at any time to the respondent company and the respondent company have no objection for changing the ownership of the vehicle as they were the actual owner of the vehicle and have undertaken to take full responsibility for the criminal case.

32. The respondents have made various submissions vide paras 17, 18 ,19 and 20 where in it has been stated that the salary to the petitioner was not paid from the end of 2012 as the petitioner had asked the 2<sup>nd</sup> respondent to relieve him from any responsibility relating to company's operation and also stopped coming to the company. The respondents have stated that all the accounts of the company are being properly maintained and there is no mismanagement of the affairs of the company. 



33. The respondents have prayed that the petition be dismissed with costs.

34. Vide para 6.7 the petitioner have submitted that R3 was appointed as the Director of M/s.Samana Engineering & Construction Private Limited on 26.09.2012 but the necessary disclosures required under the provisions of Sec.305 of the Companies Act 1956 has not been made to the 1<sup>st</sup> respondent company. They were also enclosed Form 32 for the alleged appointment of R3 as the Director of M/s.Samana Engineering & Construction Private Limited. This has been denied in toto by respondent who has stated that the R3 is not a Director of M/s.Samana Engineering & Construction Private Limited.

35. It is seen from page 61 that Form 32 wherein the name of Mr.Park is shown as the Director of the R1 company and the name as shown with that of one Mr.Park (page 87) are different both in name, address 

and also in the date of birth even though both the individuals are Koreans. Hence, the contention of the petitioner on the count is untenable.

36. In para 6.8 the petitioner has stated that the Respondent 2 and 3 have poached all the respondent companies customers, market details, and the potential business opportunities which tantamounts to abuse of the fiduciary position and lack of probity towards the R1 company. However, no details to substantiate the allegations have been furnished by the petitioner.

37. As far as vehicles are concerned the Tribunal vide its order dt. 08.03.2017 has restrained the R1 company from selling the cars of R1 Company.


38. In this petition both the petitioner and respondents have traded allegations and the only fact which has been substantiated by the petitioner is that after the salary cut for the Directors, the salary of the R2, R3 were restored to the previous level, whereas, the

salary of the petitioner was not revised after the cut in salary.

39. In view of the various allegations it clears that there is acrimony among the petitioner (40% shareholder) and R2 and R3 (R2 60% shareholders) which has adversely affected the business of the company. In such circumstances, it is felt that in order to protect the interests of the Company and the stakeholders, it is necessary to resolve the deadlock. This is in consonance with the opinion of the Hon'ble Supreme Court in Radharaman Vs. Chandrasekara Raja (2008) 6 Sec.750.

### **ORDER**

#### **The Tribunal orders that**

- (1) The value of the company may be determined by a chartered valuer to be mutually agreed upon by the parties including the 

remuneration, which will be equally shared by the petitioner and respondents.

(2) The respondents R2, being the majority shareholder, will have the first option to buy the shareholding of the petitioner. In case he fails to exercise his option the share of the R2 will be purchased by the petitioner.

(3) In case neither the petitioner nor the R2 are willing to purchase the shares, there will no other option but to wind up the company to bring to an end the matters complained of.

There will be no order as to costs.

  
**(S.VIJAYARAGHAVAN)**  
MEMBER (TECHNICAL)

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

/pb/