

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI

Arguments heard on 11.04.2017  
Orders passed on 11.04.2017

**T.C.P. No.119 of 2016**  
(C.P.No.42 of 2013)

Under Sections 397, 398, 402 and 406 of the Companies Act, 1956 and  
corresponding Sections 241, 242 and 244 of the Companies Act, 2013.

Petitioner : **Mr. S. Suresh**  
Represented by : Counsel Mr. P. Neethi Kumar  
-- Vs --

Respondents : **M/s.Avon Institute of Modern Sciences Pvt. Ltd.&Anr.**  
Represented by : Senior Counsel Mr. A.K.Mylsamy.

**CORUM**

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ,  
MEMBERS (JUDICIAL)

**ORDER**

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under consideration is the Company Petition filed by the Petitioner Mr.S.Suresh. There are two Respondents in the Petition, the first Respondent is M/s. Avon Institute of Modern Sciences and the 2<sup>nd</sup> Respondent is Mrs.Gita Prabhu.

2. Counsel for the Petitioner initiated his arguments. However, Counsel representing the Respondents drawn our attention to the fact that the Petitioner is no longer

a shareholder in the 1<sup>st</sup> Respondent Company. The Counsel for the Respondents stated that vide Resolution dated 26.12.2013 passed in the meeting of the Board of Directors of 1<sup>st</sup> Respondent Company, it has been resolved to cancel the share certificates of Mr.Subramaniam Suresh bearing Share Certificate No.09. The decision was taken by the 1<sup>st</sup> Respondent Company in exercise of its first and paramount lien on all shares of the Petitioner, pursuant to Regulation Clause (7) (2) (b) of the Articles of Association which provides that the company shall have first and paramount lien on all the shares. For the sake of the convenience, Clause (7) of the Articles of Association is reproduced below:-

*"7. 1. Regulation 9 of Table A shall not apply.*

*2. The Company shall have a first and paramount lien.*

*a) On every share, whether fully paid or not, for all moneys whether presently payable or not, called for payable at a fixed time in respect of that share, and*

*b) On all shares fully paid or not, standing registered in the name of single person, for all*

*moneys payable by him or his estate to the Company.*

*Provided the Board may at any time declare any share to be wholly or in part exempted from the provisions of this clause.*

3. *The Company's lien, if any, on a share shall extend to all dividends payable thereon. "*

3. The Counsel for the Respondents submitted that the Petitioner had to pay a sum of Rs.62,90,623/- which was illegally and in an unauthorised manner withdrawn from time to time by the Petitioner from the Company's bank accounts. It has further been submitted by the Counsel for the Respondents that lien notices dated 6.11.2013 and 22.11.2013 have been sent to the Petitioner's registered address, as was contained in the record of the 1<sup>st</sup> Respondent Company. The lien notices have been returned undelivered with endorsement "*door locked*". The Counsel for the Respondents has produced the original covers returned and the same are taken on record.

4. It is pertinent to mention that the Company Petition (CP 42/2013) came to be filed on 18.06.2013 before the CLB which stood transferred to NCLT and renumbered as TCP 119 of 2016. Counter to the Petition has been filed by the Respondents on 24.3.2014, the copy of which is stated to have been provided to the Counsel for the Petitioner wherein the Respondents very clearly mentioned under Para 41 of the said counter that the shares of the Petitioner have been cancelled in exercise of the powers conferred on the Board of Directors under Regulations 7 (2) (b) of the Articles of Association of the company, because the amount which was due and payable by the Petitioner to the company have not been paid, due to which the company has exercised its lien on the Petitioner's shares. However, right from the day i.e. 24.03.2014, when the counter was filed, the Petitioner chose to file a limited rejoinder stating that the company has no powers to exercise the lien and taken the plea that he did not receive any notice from the company.



5. Counsel for the Petitioner has been given effective opportunity of hearing but he has not been in a position to establish and satisfy this Bench that under which circumstances and provisions of the Articles of Association, the company was not competent to cancel the shares by exercising the lien, and even if the plea of the Petitioner is accepted to the extent that no notice has been received, the Petitioner never challenged the cancellation of the shares, done by the company by exercising its lien as provided in the Articles of Association. The Articles of Association is a constitutional document of the company and is also a binding instrument on the shareholders and the company has all the rights to take action against the shareholder as per the Articles of Association by exercising the lien on the shares of the Petitioner. In this connection we may make a reference to the ruling given by the Hon'ble High Court of Calcutta reported in *AIR 1959 Cal, 715* titled ***Albert Judah Judah Vs. Rampada Gupta & Anr.***, wherein it has been held that "*the company was entitled to enforce its legal right*

*to enforce the lien by selling the shares, and the court has no power to question the right of the company to exercise its legal right to sell the shares in exercise of lien for a debt due from the Petitioner as shareholder.”*

The Hon’ble High Court of Calcutta in another case reported in AIR 1971 Cal 18, titled **Unity Company Private Ltd. Vs. Diamond Sugar Mills and Ors.**, held that “*the validity of the Articles cannot be and has not been impeached or questioned. The Articles of the Association of the company on the basis of which any particular person becomes a member of the company constitutes a valid and binding contract between the members of the company inter se*”.

6. In the light of the above stated legal position, the company has rightly exercised its lien over the shares of the Petitioner. Therefore, the Petitioner is no longer share holder in the company w.e.f. 26.12.2013. Hence, the Petitioner cannot continue with this Petition after cancellation of his shares by R1 company. In view of the facts, circumstances and case law stated above, the

Company Petition is hereby dismissed. There is no order as to costs. The file may be consigned to record after due completion. Pronounced in open court.

  
ANANTHA PADMANABHA SWAMY  
MEMBER(JUDICIAL)

  
CH MOHD SHARIEF TARIQ  
MEMBER(JUDICIAL)