IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP No. 167/2016
(CP No. 29 of 2015)

Sections 397, 398, 402, 403 and 405 of the Companies Act, 1956

In the matter of

Mr. Mohit Kumar Surana

Vs.

M/s. Healthadda Retail Pvt. Ltd & Ors.

Order delivered on 11th of July, 2017

CORAM :

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

For the Petitioner(s) : Ms. D. Sneha Jain PCS
For the Respondents : Mr. Suveer Gulati

ORDER

CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration is the Company Petition No. 29 of 2015 which has been transferred from the Hon'ble Company Law Board, Chennai to this Tribunal and renumbered as T.C.P No. 167 of 2016. The Petitioner has filed this petition under Sections 397, 398, 402, 403 and 405 of the Companies Act, 1956 alleging various acts of oppression and mismanagement by the company and its directors.

2. The Petitioner while alleging various acts of oppression and mismanagement in the affairs of the said Company, sought for the reliefs as follows:-

i). Reject the Fast Track Exit (FTE) application made by 2nd and 3rd respondents as directors of the 1st Respondent Company;

ii) Declare that acts of 2nd and 3rd respondents are oppressive to the petitioner and constitute acts of mismanagement in the affairs of the said Company;

iii) Reconstitute the Board of Directors of the 1st Respondent Company.

iv) Declare that the 2nd to 3rd Respondents are unfit to act as Directors of the said Company by reason of their conduct, which disables them from acting as a director of the company and are unfit to continue as directors in the best interest of the company and remove them from the office of director.

v) Consequently permanently restrain the 2nd and 3rd respondents from in any manner interfering in the affairs of the 1st Respondent Company;

vi) Injunct the 2nd to 5th Respondents, their men, ,agents, servant, other group companies and any other person from in any manner dealing

with the assets/customers of the 1st Respondent Company;

vii) Direct the 2nd respondent, to hand over all the records, documents, assets and other papers pertaining to the 1st Respondent Company which are in their possession;

viii) Prosecute 2nd, 3rd and 5th respondents for the mismanagement and fraudulent acts under section 203 of the Companies Act, 1956.

ix) To declare the fraudulent transactions entered between 1st and 4th respondent Companies as void ab initio.

x) Grant such further or other reliefs, including orders as to costs as this Hon'ble Company Law Tribunal may deem fit and proper in the circumstances of the case and render justice.

3. According to the Petitioner Mr. Mohit Kumar Surana, was one of the founder Directors of **M/s. Healthadda Retail Pvt. Ltd.** (hereinafter referred as **"1st Respondent Company"**) and actively involved with the conceptualisation, formation and incorporation of the said Company alongwith Mr. Suveer Gulati (In short, **'2nd Respondent'**) and Mr. Mahesh Singh (For brevity, **'3rd Respondent'**). The said 1st Respondent Company was incorporated on 20th June, 2012 as a Private Company limited by shares in

the State of Tamil Nadu with its main objects to promote online shop, e-shop, health portals, online store; and to develop Business to Customer, Business to Business, online shopping mediums and all other means of e-trading and services in healthcare.

4. The Petitioner and the R2 & R3 were the original subscribers to the Memorandum of Association and also one of the first directors of the 1st Respondent Company. Presently, the Petitioner holds 25,000 equity shares in the paid up capital of the 1st Respondent Company. Subsequently, the Authorised Share Capital of the Company was increased by 55,000 equity shares of Rs.10/- each, out of which 40,000 shares were allotted to newly inducted Saumil Gandhi (In short, **'5th Respondent'**) and 15,000 shares to R2 at a premium of Rs.2.5/- per share on 4th February, 2013. The Petitioner, being one of the Subscribers to the Memorandum of Association and founder of the said Company, agreed to act as a non-executive Director. According to the Petitioner, within 8 months of incorporation of the said Company, he, at his own will, has resigned from the post of Directorship on 20th March, 2013 accusing Respondent Nos. 2 & 3 of unethical business practices and inefficiency in managing the affairs of the said Company.

5. As per Petitioner's version, the Respondent Nos. 2, 3 & 5 expressed their desire to buy the entire stake of Shares held by the Petitioner as they were directors of the said Company. However, due to lack of commitment and unprofessional attitude of the Respondent Nos. 2, 3 & 5, the Petitioner conveyed his unwillingness to sell his entire shares to the said Company.

6. On 12.11.2013, the Petitioner, via an email to the management of the said Company expressed his concern with regard to unethical and invalid statements made against him and also protested against the Financial Statement for the year ending 31.03.2013 as Related Party Transactions made by 1st Respondent Company with "M/s. Welcome Surgicals" Chennai, in which respondent No.2 is a Manager, has not been disclosed in the financial statement as per the requirement of Schedule VI of Companies Act.

7. On 12.11.2013, the Petitioner was given a notice for the 1st AGM of the said Company to be held on 30.11.2013 which was attended by him. The Petitioner during the meeting, made a request for its adjournment as the statutory Auditor (M/s Sanjay Kadel & Co.) of the said Company was not present. However, his request was not accepted by the Respondent Nos. 2 & 3.

8. The Petitioner also visited the registered office of 1st Respondent Company on 7th November, 2014 to remind the Respondent Nos. 2 & 3 to convene the 2nd AGM of 1st Respondent Company which was due. According to the Petitioner, he was shocked to know that 1st Respondent Company was not available at the Registered Office in the address register. The Petitioner filed an Investor Complaint with RoC, Chennai regarding non-intimation on change of its Registered Office and non-conducting of the meeting. Thereafter, the 1st Respondent Company updated its new address in the MCA portal on 12/12/2014 after the default was pointed out by the petitioner.

9. On 21.12.2014, the Petitioner requested 1st Respondent Company to convene the 2nd AGM and whereby 1st Respondent Company replied by email dated 13/1/2015 that a month's time is required since the respondents 2 & 3 are in the process of finalising the accounts. The representative of Petitioner again put forth the matter of convening the 2nd AGM of 1st Respondent Company by way of mail dated 16th June, 2015, but instead of holding 2nd AGM, Respondent Nos. 2 & 3 have made unacceptable excuse that they are not in town. The Respondent Nos. 2 & 3 in a reply to a complaint made by the Petitioner to RD, Southern Region intimated the Regional Director that **"on**

account paucity of funds in the 1st Respondent Company, the Board has taken the decision of closing down the operations through Fast Track Exit Scheme and thereby the Board does not deem it necessary to hold any AGM or even get its books of accounts audited." The same reply was forwarded to the Petitioner by the Regional Director.

10. The petitioner also contends that 1st Respondent Company never indicated its intention of closing down the operations of the Company and they have kept the petitioner in dark. Suspecting the intentions of Respondent Nos. 2 & 3, the Petitioner through his representative, made enquiries and searches in the affairs of 1st Respondent Company and found that e-commerce portal is still alive and doing good business. He also stated that the e-commerce business of the 1st Respondent Company is regarded as Second Biggest E-commerce Company in Healthcare segment in India as published via Newsletter in "Economic Times" dated 21/8/2014. Therefore, the Petitioner contended that 1st Respondent Company is still continuing business through its E-commerce website i.e. **www.Healthadda.com** (Hereinafter referred as **"Web Portal"**) and hence the Application for striking off the name of the 1st Respondent Company from the register is not legally tenable.

11. As per the financial statement of Respondent No. 4 Company, the Petitioner has also observed that 1st Respondent Company has fraudulently sold the website to Venante Meditech Pvt. Ltd. (For brevity, '**R4 Company**') on or before 31/3/2014 without passing any special resolution. The said transaction squarely falls within the scope of Related Parties Transaction (RPT) as R2 and R3 became shareholders on 31.12.2013 in R4 Company and hold 35% and 15% respectively in the paid up share capital of R4 Company. Further, they are also Executive Directors of R4 Company since 1.3.2014. The respondent No.5 is also an executive director of R4 Company and hold 30% paid up share capital of R4 Company and also holds 30.77% of paid up share capital of 1st Respondent Company. Therefore as per the Petitioner, the entire actions of R2, R3 and R5 would show their intentions of fraud and to cheat the petitioner in connivance with R4 Company which are acts of oppression and mismanagement.

12. On the other hand after causing the appearance, the Respondent Nos. 1 to 5 have filed a detailed counter statement stating that the entire petition has no substance whatsoever and vindictive in nature which is a classic case of abusing the process of law and same is nothing but misadventure. The Respondent Nos. 1 to 5 were set ex-party on 6.2.2017

as they failed to appear before this Bench. However, in the counter statement the respondents contended that the petitioner is a qualified Chartered Accountant who is also a subscriber to the MoA and one of the first directors of the company. The petitioner was brought into the company as a shareholder and director thereby authorising him in overseeing/handling financial accounting and financial management of the 1st Respondent Company and also to help to raise the funds. When the company was badly in need of finance, the Respondent Nos. 2 & 3 inducted Respondent No. 5 as an investor as he evinced interest in bringing the money to the 1st Respondent Company. The petitioner had resigned from the directorship of the Company at his own will within 8 months from the date of incorporation of the company by making excuses for his shoddy and slipshod work ethic and lack of professional commitment towards discharging his fiduciary duties and responsibilities toward 1st Respondent Company. The said resignation of the petitioner has made a dint in the affairs of the company and entire future plans of the company are at massive risk.

13. With regard to purchase of shares of the petitioner, they have stated that the Petitioner approached R5 with request to sell his entire stake of shares to R5 stating that he has invested Rs.

5,00,000/- in the 1st Respondent Company. Initially, the petitioner accepted the offer of Rs. 5,25,000 of R5, however, he backtracked and demanded an additional amount Rs. 25,000 from R5. The Petitioner also further demanded Rs. 5000 in lieu of reimbursement of expenses from the company which shows that the petitioner does not want to exit from the company in a smooth manner. The respondents have further stated that they have given a clear picture about the company in the director's report and they have stated that such disclosure is neither unethical nor invalid. With regard to the transaction with M/s. Welcome Surgical, which has been alleged as Related Party Transaction, the Respondents have submitted that the total purchase of 1st Respondent Company was very negligible and the said disclosure would apply to the limited extent of reporting on material matters.

14. In the counter, the Respondents have also stated that this petitioner has wantonly raised the absence of the Statutory Auditor of the company in the AGM held on 30/11/2013 and wanted to stall the conducting of the 1st AGM for the said extremely frivolous reason and with an intention of oppressing the other shareholders and harming the interest of the 1st Respondent company. With regard to the shifting of registered office of the company, the Respondents have submitted that the office was occupied on the basis of lease and

license agreement which was expired in October 2014. In order to curtail the costs, the Respondents were trying to relocate the registered office at cheaper place and the same was intimated to the Registrar of companies, Chennai by their letter dated 3rd March, 2015. Therefore, there was no truth in saying that the MCA portal was rectified after the default was pointed out by the petitioner. With regard to the request of petitioner in respect of convening the 2nd AGM, the respondents have submitted that the same has been made only to suppress the factual position before this Tribunal knowing fully well the precarious financial condition of the Company. The Respondent Company was in a process of assessing the viability of holding the 2nd AGM and in the meantime, the petitioner had raked up the matter with different authorities. Moreover, by email dated 13/01/2015, they replied to the Petitioner that they are finalizing their accounts and would get back by the month end and further replied him vide email dated 6/2/2015 that they were not in town which was made with bonafide intention and in good faith. With regard to their reply to a complaint with the Regional Director, Southern Region, the Respondents submitted that it is a fact that even though R2 and R5 have invested their money in the 1st Respondent company, the sales/Profits of the 1st Respondent company could not pick up and net losses are accumulating. When all the efforts put forth

by the respondents went in vain, they have decided to close down the operations of the Company through Fast Track Exit Scheme and the said intention was intimated to the Regional director, MCA, Chennai.

15. The Respondents, in their counter denied the submission of the petitioner that the website of 1st Respondent company is a revenue generating asset. They contends that had it been a revenue generating asset, the company would not have incurred heavy loss and struggled for funds and sold the said web portal to R4 Company. The said statement by the petitioner was only to mislead this Tribunal. Since the web portal was not generating any significant income, by way of Board Resolution dated 20th March 2014, it was decided to sell for a total consideration of Rs. 2,25,000/- to R4 Company which was over and above the WDV of the 1st Respondent Company as on 25/3/2014. Even after the sale was made to R4 Company, the 1st Respondent Company was allowed to use the website for a span of 6 months and in the said period, the R4 Company was made to spend money to make the website function more effectively and efficiently. The sale was effected after taking all efforts to improve the website, anyhow the financial problems in the company had stalled all the efforts. The petitioner is also one of the reasons for the said situation in the company. The R4 Company had also permitted the 1st Respondent

Company to use the said web portal till a new website is made by 1st Respondent Company. The Respondents in their counter have further submitted that the said sale of web portal of 1st Respondent Company to R4 Company was a prudent decision taken by the two separate entities and the question of Relative Parties Transaction would not be attracted in the said sale. Moreover, R4 Company was incorporated on 17th April, 2012 i.e. much before the incorporation of 1st Respondent Company and it is a separate legal entity and the claim of the Petitioner is baseless and without any logic. The Respondents also stated that the said transaction of sale is valid, subsisting and is a prudent business transaction between two separate legal entities which was carried out in a transparent manner. The contention of the petitioner about the said transaction is deceptive and nothing but false.

16. The petitioner has filed a rejoinder wherein he has reiterated the submissions made in the petition and also made several new prayers in addition to the prayers already made in the main petition. At this juncture, it is not appropriate to consider the new prayers made by the Petitioner in the Rejoinder as the Petitioner cannot enlarge the scope of the main petition without filing an application for amendment.

17. Having considered the contents of the Petition and also the averments of the counter statement filed by the Respondents, the main issue that arose is as follows:-

> Q. Whether the alleged acts of Respondents constitute oppression and mismanagement as contended by the Petitioner?

In order to find out the answer to the question, we shall make a mention of vital factual aspects, in the light of the case law. It is on record that the petitioner is one of the subscribers to the MoA and also one of the 1st Directors of the company. When the 1st Respondent Company was badly in need of money, 5th Respondent was brought into the company as an investor and shares were allotted to him and 2nd Respondent on premium. The petitioner has resigned from the directorship of the Company within 8 months from its incorporation. It is also on record that R5 was ready to purchase the entire shares of the petitioner for Rs.5,25,000/- and also petitioner was willing to sell his shares, however the petitioner backtracked for the reasons best known to him. The losses of the company were mounting and it has not made any significant development from its incorporation and the company was struggling for finance. In view of the factual aspect, and if the conduct of the petitioner is to be taken into consideration, the entire action of the

petitioner lacks *bonafide*, and the petitioner could not place evidence before this bench to prove his case. **In Shanti Prasad Jain Vs. Kalinga Tubes Ltd.**, it was observed that to be an act oppressive, the conduct of the company must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholders.

18. On considering the present case on merits, we find that the acts of respondents were neither burdensome nor harsh. Even suppose that there were lack of confidence between the Petitioner (Minority) and the Respondents (Majority), but the said lack of confidence did not spring from oppression by the respondents against the petitioner.

19. Moreover, it was the petitioner who left the company at his own will. The respondents have not flouted the provisions of the Companies Act, 1956/2013 and they have been able to refute appropriately the allegations levelled by the petitioner pertaining to sale of the web portal of the 1st Respondent Company. It is well settled that a single

act of financial mismanagement does not have the continuous effect which is necessary for granting relief under the provision of Sections 397 and 398 of the Companies Act, 1956. Moreover, the commercial mismanagement does not amount to oppression, therefore, the same does not require judicial interference. In support of this view, we refer to the decisions given in **"A. Ravishankar Prasad Vs. Prasad Productions P. Ltd."**, (2007) 135 Com. Cases (146). The similar view was taken in **Rutherford Re** (1994 BCC 876, 879). Therefore, it would not be just and equitable to declare that the acts of the Respondents are oppressive and constitutes mismanagement.

20. In connection with the allegations of shifting of Registered office of the 1st Respondent company, the Respondents have given a plausible explanation i.e. Office was housed on the basis of lease and licence agreement that expired in October, 2014, and further to curtail the cost, the office was relocated for cheaper accommodation and the same was intimated to the concerned Registrar of companies. Therefore, a bonafide shifting of the registered office of a company causing no loss to the company does not amount to mismanagement. In support of our view, we refer to the decision given in **"Hanuman Prasad Bagi Vs. Bagree Cereals P. Ltd."**, (2001 105 Com Cases, 493(SC).

21. In view of the facts and circumstances and the case law discussed hereinabove, we hold that the acts of the Respondents complained of do not constitute oppression and mismanagement and the petitioner has failed to make out his case for granting any of the reliefs prayed for. Therefore, the Company Petition is dismissed. There is no order as to costs. The file shall be consigned to record after due completion.

(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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