

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI.**

Arguments heard on 18.04.2017

Orders passed on 18.04.2017

T.C.P.No.185 of 2016

(C.P.No.68 of 2015)

(Under Section 397, 398 and 402 of the Companies Act, 1956)

M/s.SIBI C.K. and 11 Ors

.. Petitioners

Vs

M/s.Vijaya Hospitality and Resorts Ltd & 7 Ors. .. Respondents

Petitioners rep. by : Mr. V.Mahesh, PCS & counsel Ms.Srivarshini

R7 represented by : Counsel Mr.S.Sathiyarayanan

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

ORDER

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

1. Under adjudication is C.P.No.68 of 2015 came to be filed before the CLB that stood transferred to NCLT and renumbered as TCP No.185 of 2016. The petition has been filed under sections 397, 398, 402 of the Companies Act 1956 and Section 59 of the Companies Act, 2013. Except for R5, counsels representing other respondents caused appearance at the beginning. Counter has been filed on behalf of R1 to R4 and R6 and thereafter, they chose not to appear. In spite of the communication sent by the counsel for petitioner to R1 to R6, they have not caused appearance. Therefore, vide order dated

31.03.2017 of this Bench, R1 to R6 have been proceeded *ex parte*. Mr.S.Sathiyarayanan, counsel for R7 (Federal Bank) caused appearance today.

2. The allegations of the petitions are about the oppression and mismanagement, transmission of shares including and illegal transfer of shares. The details of the allegations with regard to transfer of shares of the 2nd petitioner to the 2nd Respondent is provided under Para XVIII at Page 17 of the company petition. The same is not mentioned in the annual returns filed by the 1st Respondent company. The table mentioned under the said para indicates the shares purportedly held by the 2nd Respondent by fraudulent means as nothing reflects from the annual returns as to how the shares of Respondent-2 have been increased and the shares of Petitioner-2 have been decreased. It is a closely held public limited company. ^{hence} nothing is reflected from the annual returns for the year 2011-12 filed by the 1st Respondent company signed by 2nd Respondent (available at Page 199 to 210). Besides this, the other allegations are with regard to illegal appointment of Shalini Vijayan (R3) and Subash Vasudevan (R7) as Directors on 2.8.2011 which has not been

regularised as per Section 257 of the Companies Act, 1956. Hence, they ceased to be the Directors on 30.09.2011. Even R7 in his counter filed on 16.11.2015 disputed his appointment as Director.

3. It has been alleged by the petitioners that Saira Thampi (R4) has also been appointed illegally as Director on 27.03.2012 for which no Board resolution was passed. There are allegations of forged resignation letters of C.K.Sibi (P1) and Baboo C.K. (P2) who have illegally been removed from the Board on 07.06.2012. It is further alleged in the company petitions that there is illegal transmission of 3,452,825 shares on 29.03.2012, of late Thampi Krishna to his widow, viz. Saira Thampi (R4) by ignoring the other legal heirs.

5. The petitioner also alleges illegal appointment of Mannoor Raghavan Ajaykumar (R6) as Managing Director and illegal change in designation of Mr.C.K.Vijayan (R2) from Managing Director to Chairman on 19.02.2014. The other allegation is with regard to the illegal appointment of Akshaay Vijayan (R6) as Director on 28.06.2014, as shown in the documents placed at Page 179 (Annexure-15) of the petition.

6. Respondents 1 to 4 and R6 have filed counters on 3.10.2016 wherein under Para 26, it has been stated that since the petitioners 1 and 2 are nominated Directors at the instance of R2 and can certainly be removed from the Directorship without assigning any reasons and not seeking others' alleged forged signatures, etc., as alleged by the petitioners. The answering respondents have also denied the allegations that have been levelled by the petitioners.

7. The counsel for petitioners has drawn our attention to the Articles of Association wherein under Para 15(b) at Page 26 of the typeset it has been mentioned that the first directors of the company are C.K.Vijayan, C.K.Thampi Krishna, C.K.Sibi (P1) and C.K.Babu (P2). C.K.Thampi Krishna expired while Petitioners 1 & 2 were removed from the Directorship. Neither notice was given nor Board's resolution was passed. However, R1 to R4 and R6 have not properly controverted the allegations levelled in the company petition and in the absence of reasonable explanation, the illegal actions are not sustainable as there is non-compliance with the provisions of the Companies Act. The detailed allegations in the CP and the documents filed in support thereof established that the answering respondents

have been running the company without following the provisions of law and taken decisions to have control over the 1st respondent company and sidelined the petitioners. As they have not been allowed to participate in the Board meetings and no notice has been served on the petitioners for holding the AGM. Therefore, as Directors and shareholders, their rights were being violated continuously, which constitutes oppression. The element of mismanagement is also established against the respondents because due to diversion of funds there is huge liability of 1st Respondent company, for which R8 has already taken steps to recover the entire outstanding. However, this Bench vide order dated 12.01.2017 has passed directions permitting the petitioners to infuse funds in order to satisfy the claim of R8, i.e. Federal Bank. The said order shall form part of this order.

8. Therefore, in order to provide substantial justice to the petitioners and to end the matter complained of, we are inclined to grant further reliefs as follows :-

(a) We remove R3, R4, R5 and R6 from the post of Directors by declaring their appointments as illegal and appoint Petitioners 1 and 2 as Directors of R1 company and P1 shall discharge the functions of the Chairman and

Managing Director of the 1st Respondent company; We remove R2 from the post of the Chairman of the company. However, he shall perform the functions of the Director of 1st Respondent company;

(b) We also set aside the transmission of shares of late Thampi Krishna to Mrs.Saira Thambi (R4) and direct the company to enter the names of all the legal heirs of the deceased Thampi Krishna equally including Mrs.Saira Thampi.

(c) We also cancel the illegal transfer of shares from Baboo K.C. (Petitioner-2) to C.K.Vijayan (Respondent-2) as being totally forged and fabricated and direct the 1st Respondent company to rectify the register by restoring the name of Petitioner-2 and his shareholding pattern as was existing on 30.09.2010.

Besides the above, the Petitioner-1/Petitioner-2 are directed to file the copy of INC 28 which shall be registered by the Registrar of Companies concerned within 30 days from the date of passing this order. Accordingly, the Company petition TCP 185 of 2016 (CP 68/2015) is disposed of. The file shall be consigned to record after due completion.

Order pronounced in the open court.

(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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