

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI

Arguments heard on 17.03.2017  
Orders passed on 17.03.2017

**C.P.No.13 of 2016**

Under Section 241 of the Companies Act, 2013

Mr.Sankara Narayanan Subha Sunder  
-Vs-  
M/s.Nal Unavu Foods Private Ltd  
Mr.Selvaraj Kumararajas

Petitioner represented by : Shri. C.K.Riju, PCS  
No representation on behalf of R1 and R2

CORUM

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

**ORDER**

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

1. PCS Shri C.K.Riju representing the petitioner present and made submissions. Respondents are called but absent. There are no representations on behalf of the Respondents. The order of this Bench dated 01.02.2017 reveals that due notice has been served on 2<sup>nd</sup> Respondent but he chose not to appear before this Tribunal. Therefore, Respondent No.2 is set ex parte on 01.02.2017.
2. The C.P.No. 13 of 2016 has been filed under Section 241, 242 r/w 244 of the Companies Act, 2013 on 17.11.2016 wherein

there are only two Respondents. Respondent-1 is the company and Respondent-2 is Mr.Selvaraj Kumararajas who is the director of R1 company. The petitioner is also one of the Directors of R1 company. The entity is a closely held private limited company consisting of three shareholders. The petitioner is holding 3750 shares constituting 37.5% of the issue, subscribed and paid up capital.

3. The main allegations levelled by the petitioner against Respondent-2 are that he has taken away the machinery of R1 company. The value of the machinery is Rs.9,00,000/- out of which a sum of Rs.6,00,000/- has been funded by availing bank loan. After taking away the machinery, Respondent-2 is running a similar business in the same name as that of R1 company. Respondent-2 has also shifted the registered office of R1 company besides luring the clientele of R1 company to his own business. Apart from the allegations made in relation to non-payment of bank loan, etc. the petitioner levelled other allegations which pertains to oppression and mismanagement and particularly the non-compliance of statutory provisions. In the premises, the petitioner prayed the following reliefs :-

Main reliefs

- c) *To direct the 1<sup>st</sup> Respondent to remove the 2<sup>nd</sup> Respondent from the directorship of the 1<sup>st</sup> Respondent*
- d) *To direct the 2<sup>nd</sup> Respondent to release the machinery of the 1<sup>st</sup> respondent under his custody to the petitioner for future custody on behalf of the first respondent.*
- e) *All incomes generated fraudulently using shield of Sole proprietary, not registered, under ownership of 2<sup>nd</sup> Respondent using the registrations of the 1<sup>st</sup> Respondent and with the machinery of the 1<sup>st</sup> Respondent be reimbursed to the 1<sup>st</sup> Respondent, since the commencement of business by the 2<sup>nd</sup> Respondent under the Sole proprietary not registered, using the registrations of the 1<sup>st</sup> Respondent to till of date its continuation, by the 2<sup>nd</sup> Respondent.*
- f) *To direct the 2<sup>nd</sup> Respondent to pay off the liabilities including the bank loan of the 1<sup>st</sup> Respondent, in full, the EMI payment of which was interrupted due to fraudulent activities of the 2<sup>nd</sup> Respondent and also the standstill of the business activities of the 1<sup>st</sup> Respondent.*
- g) *To ensure and support in all statutory compliances of the 1<sup>st</sup> Respondent till he being relieved from the Directorship of the 1<sup>st</sup> Respondent as mentioned in Clause (c) above and*
- h) *To pay compensation of Rs.28 lakhs infused into the 1<sup>st</sup> Respondent by way of working capital, investments, promotional activity expenses met by the petitioner and other subscriber-shareholder/First Director i.e. Ms.Venkitachalam Maha, for the growth of the 1<sup>st</sup> Respondent be reimbursed in full.*

4. After perusal of the pleadings and the documents placed on record, we are satisfied that Respondent-2 is responsible for oppression and mismanagement and his acts of misfeasance and malfeasance are found to be deliberate. The said acts are responsible for the mismanagement in the affairs of R1 company.

5. Therefore, we order the removal of Respondent-2 from the directorship of R1 company from today and direct Respondent-2 to return the machinery to R1 company and submit a report to this Bench in this regard, within four weeks from the date of receipt of this order. Respondent-2 is also directed to pay 1/3<sup>rd</sup> of the loan availed from bank together with interest. The petitioner undertakes to bear his share of 1/3<sup>rd</sup> of the bank loan along with interest and submitted that the 3<sup>rd</sup> shareholder namely Ms.Venkitachalam Maha is also willing to settle 1/3<sup>rd</sup> portion of the bank loan along with interest.

6. We appoint Ms.Venkitachalam Maha as Director of R1 company w.e.f. the date of this order and direct the Petitioner and the newly appointed Director to file necessary documents with the Registrar of Companies, Chennai.

7. Our attention is also drawn to the prayer of the petitioner seeking payment of compensation of Rs.28,00,000/- which as per his statement, a sum of Rs.12,00,000/- towards the loan given by him to R1 company and a sum of Rs.16 lakhs towards outstanding remuneration on account of his being Director of R1 company. However, Keeping in view, the acts of oppression and mismanagement and particularly the misfeasance and malfeasance for which Respondent-2 is held responsible, we are inclined to surcharge Respondent-2 to the tune of Rs.10,00,000/- which he shall remit to the bank account of R1 company within a period of three weeks from the date of receipt of this order. Respondent-2 is permanently restrained from using the name of R1 company for promoting his own business. Accordingly, the petition is disposed.

  
ANANTHA PADMANABHA SWAMY  
MEMBER (JUDICIAL)

  
CH MOHD SHARIEF TARIQ  
MEMBER (JUDICIAL)