

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

C.P No. 59 of 2011

(TP No.56/HDB/2016)

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Date of order: 06.01.2017

Between:

1. Mr. Vangala Niranjan Reddy,
S/o. Vangala Venkat Ramana Reddy,
1-4-446, Flat No. 515,
Hi-Line Arcade,
Bholakpur,
Hyderabad-500080

... Petitioner

And

1. Breezy Farms and Resorts Private Limited
Reg. Office at Plot No.27,
Durga Nagar Colony,
Panjagutta, Hyderabad-500082
Admin Office at 304, Kantishikara Apartments,
Somajiguda,
Hyderabad-500034

2. Mr. S. Jaipal Reddy
S/o. S. Raji Reddy
Flat No.306,Sarada Apartments,
Road No.1, Banjara Hills,
Hyderabad-500034.



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OF THE ORIGINAL**

3. Mr. V. Venugopal Reddy,

S/o. V. Yadagiri Reddy

Flat No.101/A, My Home Hill View Apartments,

Somajiguda,

Hyderabad-500082.

4. Mr. Punukollu Sudhir

S/o. P. Buchi Prasad,

Plot No.26, Durga Enclave,

Road No.12, Banjara Hills,

Hyderabad-500034.

5. Mrs. A.S. Lakshmi

8-2-674/B/2/15,

Road No.13A,Banjara Hills,

Hyderabad-500034

... Respondents

Counsel for Petitioner:

Mr. T. Srinivas Rao

with Mr. M. Govind Reddy

Counsel for Respondents:

Mr. Arvinth Pandian

along with Mr. Nikhil Khadkikar

& Mr. Omer Farooq

CORAM

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Tech)



ORDER

[As per Rajeswara Rao Vittanala, Member (J)]

1. The Company Petition bearing No. 59 of 2011 was initially instituted in the then Hon'ble Company Law Board, Chennai. Upon the constitution of National Company Law Tribunal (NCLT) Bench at Hyderabad for the States of Andhra Pradesh and Telangana, the case was transferred to this Bench as it falls under the jurisdiction of this Bench. The case is numbered as TP No.56/HDB/2016 and thus deciding the case.
2. The learned counsels for both the parties submit that the case can be decided basing on the various averments made in the Company Petition, Counter Reply, Addl. Reply etc. and have also filed written submissions on behalf of Petitioner as well as Respondents. We have perused all the pleadings including written submissions made by both the parties and thus we are deciding the case.
3. The Company Petition No. 59 of 2011 (which is referred to as 'Petition' hereunder) was filed by Mr. Vangala Niranjan Reddy under Sections 397, 398, 402, 409 of the Companies Act, 1956, by inter-alia seeking a declaration to declare the resolutions passed on 11.03.2011 and 05.04.2011 as null and void; to direct the respondents to issue due notice of the meetings of the first respondent Company to the petitioner and, he should be permitted to run the business affairs of the Company etc.

4. The brief facts leading to the filing of present petition, as set out in the petition, are as follows:-



Breezy Farms and Resorts Limited was incorporated on 24.06.2005 as a Private Limited Company (Which is referred to as Company herein after) as per the provisions of Companies Act, 1956. The main object of the company is to purchase, acquire, take on lease any kind

of land and develop the same. The authorized share capital of the Company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each out of which 2,50,000/- shares are issued as being fully paid up.

- b. The Petitioner was initially shareholder of the 1st Respondent Company by holding 50,000 shares in the Company. Due to his hard work, he was appointed as Director and principally engaged to find suitable properties at reasonable on best available prices on market. He was also authorised to draw an amount of Rs.7,000/- per month as a remuneration for the services rendered to the Company. In order to achieve the aims and objects of the Company, he has invested substantial amounts in the Company in purchasing properties situated in Survey Nos.351/E, 366, 399 etc. situated at Surangal Village, Moinabad, R.R. District to an extent of 95.58 acres.
- c. The petitioner contends that about 195 plots, out of 327 were sold to different purchasers from time to time and there are about 132 plots still remain vacant. He asserts that he was instrumental in all the major transactions of the Company.

When the Company was facing financial distress, he has called for a meeting of the Directors and Shareholders of the Company on 20th December, 2010 to discuss about the raising of funds to meet the payment of interest and complete the remaining part of the farm house. However, the respondent No. 2 to 4 have not only refused the



said proposal but also abused him in filthy language alleging lack of performance etc.

e. He further alleged that when he visited the company's administrative office on 21.12.2010, it was locked with new lock. Subsequently, he came to know that the office records and computers of the Company were shifted and several properties were sold at very low price. It is further averred that the respondents are making every effort to create third party interests in the properties owned by the Company.

f. He further alleges that the Respondents No.2 to 4 are preventing the petitioner from managing and attending to the day-to-day affairs of the business with dishonest intention in order to cause loss to the company as well as to the petitioner and other existing plot holders.

In the above circumstance, he was forced to file a Civil Suit bearing O.S.No.832 of 2010 on the file of 2nd Additional District Judge, R.R. District, L.B. Nagar. The Suit was filed seeking mandatory injunction permitting him to participate in the day-to-day affairs of the 1st respondent Company. However, the suit was stated to be still pending without any further orders.

g. The petitioner submits that the Board Meeting was held on 11.03.2011 in which, the petitioner along with other directors have attended. The discussed agenda in this meeting is as follows:-

- i. To grant leave of absence
- ii. Confirmation of minutes of previous meeting held on 08.11.2011
- iii. To consider on progress report for the quarter



- iv. To review the financial position of the company
- v. To discuss about the case filed by Mr. V. Niranjan Reddy, Director against the company and its other Directors
- vi. Any other business with the permission of the Chair.

Hence, it is contended there was no other issue except the above was discussed in the above meeting.

- h. The petitioner states that he received the minutes of the board meeting dated 11.03.2011 along with copy of the requisition notice for convening EGM on 05.04.2011 regarding his removal as Director given by 5th Respondent. It is stated that he received the said notice only on 01.04.2011 and subsequent days ie. 02.04.2011, 03.04.2011 & 04.04.2011 happens to be Government holidays. Even though, the suit was pending, the Respondents No. 2 to 4 wantonly received a complaint dated 08.03.2011 from the 5th respondent (Mrs. A.S. Lakshmi). In pursuant to the said complaint, the petitioner gave elaborate reply dated 04.04.2011 to the Company as well as the complainant. Without considering the reply of the petitioner, the respondent Nos.2 to 5 represented by proxies passed a resolution dated 05.04.2011 by removing the petitioner from the post of the Director with immediate effect.



- i. The petitioner states that pursuant to his removal, he made an enquiry with regard to the complaint dated 08.03.2011 given by the 5th respondent, she was alleged to have stated that she has no knowledge about the contents of any documents/letter, while endorsing her signature and further stated she was ignorant of the Company and

her knowledge in English was very limited. It is further alleged that the 5th respondent has never attended any meeting of the company including AGM. The petitioner alleges manipulation and corrections in the letter.

- j. The petitioner contends that the respondent No.2 to 4 are now trying to dispose of some of the plots of the Company much below market value, which would cause loss to the Company as well as to the petitioner.
- k. The petitioner contends that the respondent No.2 to 4, with a malafide intention prevented him from either entering into the company and in participating with the day-to-day affairs and board meetings and thereby the affairs have been conducted in a manner prejudicial to the interest of the Company and, it is oppressive in nature to the rights of the petitioner, since he was deprived the rights as a Director. It is also alleged that in not sending communications without any material is nothing but oppressiveness against him. The actions of the 2nd respondent doomed the company's business into losses, which affects the interest of the company and its members.

5. The respondent No.1, 3, 4 and 5 have filed a common reply dated 14th November 2013 contending as follows:-



The Company Petition was filed with a cohesive, aimed at to disrupt the smooth running of the Company, under the guise of oppression and mismanagement with ulterior motives. The petition has been filed with unclean hands and, it is nothing but to abuse the process of

law. They have stated that the Company was promoted by Jaipal Reddy, Venugopal Reddy and P. Sudheer (Respondents No.2 to 4) and they are the first Directors of the company.

ii. The Board of Directors of the Company has engaged the petitioner to do and provide liaison services required for conducting business of the company and he was being paid Rs.7,000/- p.m. for such service since November, 2010. He became the shareholder of the Company only on 20.03.2006; subsequently he was appointed as Non-Executive Director during the board meeting held on 26.11.2007. The remuneration being paid to the petitioner was also continued even after becoming a Director.

iii. They further stated the Company has authorised the 2nd and 3rd Respondents to undertake all activities of the Company and, they have also purchased lands for the company even before the petitioner became shareholder of the Company. All the properties were purchased in the name of the company represented by the 2nd and 3rd respondents and they have also filed the supporting documents like sale deeds etc.

iv. They have further stated that the petitioner was not at all involved in purchase and selling of the property. The Company has not distributed any dividends among the shareholders including Directors out of the profits of the company.

V. They have further stated that the administrative office of the company is still functioning from the same premises and, the allegations made contrary by the petitioner are false and denied. They stated that the



petitioner even now visiting the office frequently and, he was never stopped from visiting the site or office as a shareholder of the Company. The petitioner has attended the board meeting held on 11.03.2011 and EGM of shareholders held on 05.04.2011 and, he had filed a case against the company and other Directors and the same was withdrawn later.

- vi. They have further stated that a notice of the board meeting along with agenda was sent to all the Directors including the petitioner on 28.02.2011 calling for a meeting to be held on 11.03.2011. The Company received a letter dated 08.03.2011 from Smt. A.S. Lakshmi, Respondent No.5 asking for removal of the petitioner as Director of the company giving reasons for the same. So the issue was discussed in the board meeting held on 11.03.2011 under the item "other business", in which all the Directors including the petitioner were present. They further stated that the board had decided to convene EGM on 05.04.2011 for consideration of the letter received from the Respondent No.5. The Board requested the petitioner to reply to the letter of Smt. A.S. Lakshmi. EGM was conducted on 05.04.2011 at 11 am, wherein the petitioner was also present. A resolution was moved based on the letter of Smt. A.S. Lakshmi for removal of the petitioner as a Director of the Company by the Chairman and, the resolution was approved by 80% of the shareholders and the petitioner had walked out of the meeting. A letter dated 04.04.2011 was given by the petitioner at 11.40 AM on 05.04.2011 in the office of the first Respondent Company. They have further denied the



allegation of the petitioner that Smt. A.S. Lakshmi has little knowledge in English.

6. The petitioner has filed an additional affidavit dated 09.06.2012 by interalia contending that he has earlier filed Civil Suit bearing OS No.832 of 2010 before IInd Addl District Judge, Ranga Reddy District, Hyderabad for mandatory injunction against the respondents from interfering with his participation in day to day affairs of the Company. It is also stated that IA No.90 of 2011 was also filed for interim injunction. And the company has leased out its property to M/s Royala Rivirera Resorts and Clubs for a period of 5 years and received a sum of rupees two lakhs as advance and Rupees twenty thousand as monthly rent by executing unregistered deed dated 01.02.2012. And it is alleged that he was not informed about it, even though the Board passed an interim order dated 05.08.2011 directing the respondents to intimate the decisions of the board during the interregnum. It is also alleged that the said lease was given for far lower than the market value. When the lease was made, it is necessary for the company to conduct a Board Meeting as decision was taken with ulterior motives.



The petitioner has filed his rejoinder dated 02.02.2013 to the counter filed by respondents to the Company Petition. The petitioner has denied all the allegation of the respondents. He has stated that the administrative office of the Company was started in the address No.6-3-906/B, Somajiguda, Hyderabad-500008. Subsequently, in the year

2008, it was shifted to the address, which was stated in the counter. However, the respondents are making false statements to mislead the Tribunal. It is stated that there was a joint account bearing account no. SB/01/00010222 in the name of petitioner, Respondent No.2 and 3 in Andhra Bank, Rajbhavan Road Branch, Hyderabad, where in funds were pooled in starting the Company and the account was closed and, the amounts were deposited in the account of 1st Respondent Company. The petitioner was neither a shareholder nor Director at the time of incorporation of Company. It is also averred that the petitioner has contributed so much to the Company and all the properties of Company were purchased by 2nd& 4th Respondent for the Company from 30.07.2005 that too by utilising the funds of petitioner.

8. The petitioner further contended that the petitioner being Director and administrator of the Company used to conduct monthly ordinary meetings in the Company premises. One of such meeting was held on 20.12.10, wherein the present a cause of action arose. In the Board Meeting dated 11.03.2011, it was proposed to increase authorised share capital to one lakh instead of raising it from 25 lakhs to 50 lakhs . Only the 3rd Respondent brought Rs.3,00,000/- during the financial year 2004-05 and another Rs.2,00,000 during the next financial year only to fulfil his short contribution made earlier and, none of the respondents funded as per the minutes of the Meetings dated 11.03.2011. However, the petitioner had contributed a sum of Rs.7.78 lakhs to the Company during the period 1.04.2009 to 31.03.2010, which was earlier to the Meetings



dated 11.03.2011. It is alleged that after the removal of petitioner as Director, the Respondent No.2 to 5 wantonly altered some of the contributions made by the petitioner.

9. The learned counsel for the petitioner has filed written submissions dated 28th January, 2015. The sum and substance of the contentions raised in the written submission are as follows:

- a) The company was incorporated in the year 2006 and the petitioner was actively involved with business of Company since its incorporation. He became the Director of the company in the year 2007 and he discharged his duties as such until he was illegally removed as Director of the Company in April, 2011.
- b) The learned counsel has further stated that the petitioner had totally invested a sum of Rs.41,50,000/- in 2005-06 through banking channels alone. The company had shareholders each holding 20% of the entire shareholding of the Company
- c) The Learned counsel contended that the petitioner was taken as shareholder into the company and he was made a Whole Time Director. It is contended that the Company was Quasi-partnership concern and thus, the Directorship of the company goes with shareholding of the members. Since, he is still shareholder of the company; he is entitled to be continued as Director of the company. In support of this contention, he relied upon judgment of Apex Court in Sangrainsinh P. Gaekwad & Ors Vs Shanta Devi P. Gaekwad & Ors reported in (2005) 11 SCC 314 and Dinesh Sharma & Anr Vs Vardaan Agrotech Pvt Ltd & Ors reported in [2007] 135 Comp Cases 133 (CLB).



- d) Even when O.S No.832 of 2010 was pending, petitioner was removed as Director of the company. He was served with a notice for an EGM to be held on 05.04.2011 on the requisition of a shareholder (Respondent No.5). Along with the notice of EGM, a special notice from 5th Respondent and alleged minutes of meetings of Board of Directors was also enclosed.
- e) The Learned counsel for the petitioner further submitted that the petitioner attended the meeting of 11.03.2011 and there was no discussion about his removal as Director. The 5th Respondent, who had allegedly given the requisition for the removal of the petitioner as a Director had not attended the EGM and was present only through proxy. In the meeting, the petitioner was removed as director and, his removal is per se oppressive in nature.
- f) The petitioner contends that the resolution passed on 05.04.2011 was illegal on the ground that there was no board meeting held to convene EGM. Even 5th Respondent does not know English and not present at the EGM also. And the respondents have not given him proper notice. The notice in question was only served on 1st April followed 3 days of governmental holidays and the meeting was held on 5th April. So, giving less than 7 days contravenes Art. 27 of Articles of Association (here in after called as AOA) of the Company. He contends that the notice dated 22nd March was served by courier on 1st April only.
- g) The removal of petitioner as Director is an extreme step done in contravention of accepted procedural law and the same is oppressive and arbitrary. He relied upon the judgments of Kerala High Court in Queen Kurries & Loans Pvt Ltd Vs Sheena Jose &Ors reported in [1993] 76 Comp Cases 821 (Ker) and Judgement of Hon'ble Supreme Court in Needle Industries (India) Ltd & Ors Vs Needle Industries Newey (India) Holding Ltd &Ors reported in (1981) 3



SCC 333 and M.S.D.C Radharaman Vs M.S.D Chandrasekara Raja &Anr reported in (2008) 6 SCC 750.

10. The learned counsel for respondents has also filed written submission dated 3rd October, 2016 by interalia contending as follows:

- 1) They have contended that the Company was incorporated on 24.06.2005 by the Respondent No.2 to 4, who are the first Director of the Company with initial share capital of Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each, which was subsequently increased to Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. They have not disputed the share holding pattern of the Company as all the 5 Shareholders including the petitioner holds 20% each.
- 2) The main business of the Company is to purchase or lease of land and buildings and dispose off the same. The Board of Directors of the Company engaged the petitioner to do and provide liaison services in the conduct of business operation of the 1st Respondent Company, for which he was paid Rs.7,000/- per month since, Nov. 2005.
- 3) The petitioner became shareholder of the company only on 23.03.2006 and later he was appointed as Non-Executive Director during the meeting of Board of Directors held on 26.11.2007. And the Company had bought over 95 acres of land and sold nearly 54 acres of land before the petitioner became the Director of the Company.
- 4) They further contended only 2nd and 3rd Respondent undertook all activities of the Company. The Company never raised finances borrowing from the creditors except raising unsecured loans from directors and shareholders to acquire



various properties in the name of the Company. The petitioner was never involved in the purchase and selling of the properties.

- 5) They further contended that on various occasions, the Board requested the Directors to invest Rs. 5 lakhs each in the initial stage but the petitioner expressed his inability to raise funds. In addition, the petitioner withdrew Rs.2.20 Lakhs from the Company, which he has given to the Company as unsecured loan.
- 6) A notice of the board meeting along with agenda was sent to all Directors including the petitioner on 28.02.2011, calling for a meeting to be held on 11.03.2011. The Company received a notice under Section 284 r/w Section 190 of the Companies Act, 1956 vide letter dated 08.03.2011 from Smt A.S. Lakshmi (5th Respondent), proposing a resolution for the removal of the petitioner as director of the Company. The said notice was discussed in the Board Meeting held on 11.03.2011 under the item 'any other business. It is not in dispute that the petitioner was present during the said board meeting.
- 7) During the said board meeting, it was decided to convene E.G.M on 05.04.2011. As required under the provision of Section 284(3) of the Act, the Board had furnished a copy notice to the petitioner and asked him to reply to the letter of Respondent No.5.
- 8) E.G.M was duly conducted on 5.04.2011 at 11:00A.M, where in the petitioner was also present. A resolution for the removal of the petitioner as Director was moved by the chairman and the resolution was duly passed with 80% of the shareholders voting in favour of the resolution. However, the petitioner walked out of the meeting venue after the resolution was declared to have been passed. As stated above, the petitioner submitted a letter dated 04.04.2011 only on



05.04.2011 at 11.40 AM ie that after the meeting was over. It is alleged that the petitioner had even threatened the prospective lessors and buyers with legal consequences, if the Company tried to either lease out the club facilities of the company or try to sell the lands of the Company.

9) They further reiterated that the petitioner has approached the Tribunal with unclean hands. The only grievance of the petitioner is that he was removed as Director. They contended that he was removed from directorship strictly in accordance with law. They relied upon number of decisions in Subhash Hastimal Lodha and Another Vs Manikchand Promoters and Developers Pvt. Ltd and Other reported in [2007] 140 Comp Cases 512 (CLB), Walter Bushnell P. Ltd V. Mapra Laboratories P. Ltd reported in [2008] 141 Comp Cas 515 (IPAB), Aslam M. Ali Vs Narbada Valley Chemicals Industries P. Ltd.

11. The Learned counsel for the respondents has filed sur-rejoinder dated 06.12.2013 and reiterates that the company has bought over 95 Acres of land before the petitioner became Director of the company in November 2007 and sold nearly 54 Acres of land including the lands earmarked for Open Space Reservation and Roads before November 2007. The business of the company has come down due to the protest of separate State of Telangana. They further stated that the petitioner threatened the prospective lessors and buyers with legal consequences and in support they filed two legal notices dated 08.04.2013 to

Mr. D Nitin Kumar Reddy and Mr. Ravikanth Gajula by threatening with legal consequences if they proceed with disputed land of the company. They have also filed a copy of the order dated 20.09.2011 passed in IA No. 90 of 2011 in OS 832 of 2010, in which the IA was dismissed against the plaintiff (petitioner



here in) by holding that the petitioner failed to make out any case, balance of convenience.

12. We will examine the judgements/decisions relied upon by both parties in support of their respective cases.

13. The learned counsel for petitioner has relied upon the following judgements in support of his case:

a). **M.S.D.C Radharamana Vs M.S.D Chandrasekara Raja and Another**

(2008) 6 Supreme Court Cases 750: In this case, it is interalia held that the Tribunal should not take the interest of applicant alone, but it should also take into consideration of the interest of the shareholders of the company as a whole and the Company, at the time of deciding the case of oppression and, also held it should pass such an order, which would be beneficial to the company and majority of shareholders.

b) The Company Law Board, Principal Bench, New Delhi in Shri Dinesh Sharma and Smt Bina Sharma Vs Vardaan Agrotech Pvt. Ltd and Ors. [2007] 135 Comp Cas 133 (CLB). The issue raised in the case is the oppression and mismanagement by the Respondents. The Petitioner No.1 is the son and the Petitioner No.2 is the daughter-in-law of Respondent No.2. It is interalia held that the impugned allotment of shares was done with the sole object of gaining

control of the company by becoming majority shareholders was clearly an act of oppression on the part of respondents and the meeting in question for passing resolution were held at the back of petitioners without giving proper notices and



following proper procedures. In the above circumstances, the CLB held in favour of the petitioners therein.

It is not in dispute in the present case that the petitioner had received the notices for meetings in question and, also attended the meeting. Hence, the above decision is not applicable to the facts and circumstances of present case.

c). Queen Kuries and Loans (P) Limited Vs Sheena Jose 1992 Law Suit (Ker) 140.

The main issue in the present case is that conducting of Extraordinary Meeting of the company and, the resolution passed in the meeting are in question and, the CLB, on being found that no notice was given about the meeting, has declared that the resolution passed in meeting in question as illegal.

This case is also not applicable to the present case for the reasons stated above.

d) Needle Industries (India) Limited and Others Vs Needle Industries Newey (India) Holding Ltd and Others (1981) 3 Supreme Court Cases 333. One of the issues, which is relevant to the issue raised in the present, considered in this case, is whether not serving a notice for conducting a meeting would vitiate the entire consequential proceedings or not? The Hon'ble Supreme Court held that holding a meeting without serving a notice was illegal but that decision may not be treated as non-est where no injury to proprietary rights caused to the aggrieved shareholders.

The facts and circumstances of this case is also of no help to the petitioner for the reasons stated above. The petitioner was part of all decisions taken by the Company and whether decisions taken by the Company is correct or not cannot be gone into by Tribunal and it is paramount duty of the Tribunal to see whether the Company has followed principles of natural justice in taking



decisions of the Company by protecting paramount interest of majority of share holders and the survival of Company itself.

14. The learned counsel for respondents relied upon the following judgments in support of his case.

a) **Rahul Shah and Others Vs Avi Sales P. Ltd and Others** (2008)141 Comp.Cas 505(CLB)

It is interalia held equitable relief cannot be granted where a petitioner has not come with un- clean hands, that too after a delay of 3 years, without sufficient reasons given for delay in a case where petition was filed u/s 397, 398. In this case, the petitioner was removed from the post of Director, after giving him a proper notice. The allegation of petitioner therein was that he was not given proper notice as the notice was stated to be sent 'under the certificate of posting'. However, the Board, after taking into consideration of facts and circumstances of the case, has held that the petitioner was fully aware of his removal as Director. Ultimately, the petition was dismissed.

The above case is relevant to the present case. As stated above, the petitioner was given proper notice and he was also given a copy of notice given by the 5th Respondent proposing a resolution to remove him as Director and he was also given opportunity to rebut the allegations. And top of it, he has attended the meeting and when the resolution for his removal was taken up, he has walked out. It is also on record that the petitioner has unsuccessfully filed IA No. 90 of

2011 and also got issued legal notices to the prospering parties so as to interfere in the interests of the company. So, the petitioner has come to the Tribunal with unclean hands. Hence, the facts and circumstances of the present case are similar to the above cited case.



b) **Aslam M Ali Vs Narbada Valley Chemical Industries P. Ltd and Others**
[2014] 183 Comp Cas 21 (CLB).

In this case, one of the issues raised is the removal of the petitioner from directorship of the company without following proper procedure. After considering the facts and circumstances of the case, relevant laws and issues, the Hon'ble Tribunal held that it is an established law that directorial complaint cannot be termed as an act of oppression unless the principle of quasi partnership is pleaded and proved. It was also stated there in that the petitioner himself was an investor in the company by holding 10 shares as on the date of filing the petition. Ultimately, the case was dismissed.

In the present also , it is not in dispute that the petitioner himself has stated in the petition that the Respondent Company is a Private Company incorporated on 24.06.2005 as per the provisions of the Companies Act, 1956 and is holding 50,000 shares in the company. So, the company is not a quasi partnership as pleaded and the petitioner was removed from directorship by duly following relevant rules in giving notices, etc. Moreover, the main issue raised in the present petition was his removal as Director and this cannot be entertained unless he was removed illegally without following principles of natural justice. Hence, the above case is also applicable to the facts and circumstances of the present case.



Subash Hastimal Lodha and Another Vs Manikchand Promoters and Developers P. Ltd. And Others [2007] 140 Comp Cas 512 (CLB).

In this case, it is interalia held that the conduct of parties is relevant factor to be considered in equitable proceedings u/s 397, 398 and the petitioner seeking

equitable relief must come with clean hand and good conduct, failing which the petition would constitute gross abuse of the process of the Court and thus, the petitioner is not entitled for relief u/s 397, 398.

As stated above, the petitioner is trying to interfere in the affairs of the company by making several baseless allegations against the respondents. In fact, the allegations made by the petitioner in IA No.90 of 2011 were rejected by the Civil Court. Hence, this case is also applicable to the present case.

15. In the light of above discussion of the case, the main issues to be decided in the present case are:

- a. a. Whether he is entitled to be continued as Director for life on the contention that the Company is quasi partnership firm;
- b. Whether the petitioner was given due notices for meetings, which culminated into passing the impugned resolutions dated 11.03.2011 and 5.4.2011;
- c. Whether the petitioner has approached the Tribunal with clean hand;
- d. Whether removal of the petitioner from the Directorship is illegal.

14. Breezy Farms and Resorts was registered as Private Limited Company under the provisions of Companies Act, 1956 on 24th June, 2005. As per Article 3 of Articles of Association of the Company, it is stated that 'the Company is a private Limited Company within the meaning of Section 3(1) (iii) of the Companies Act, 1956. So it cannot be called a quasi-partnership concern as contended by the petitioner.



16. It is noted that as per Article 27 of Articles of Association, a written notice of at least seven days (unless a shorter period consented to by all the members who are holder of equity shares) of every General Meeting. A General Meeting can be called by the Managing Director or the by Board. And two members personally present shall form a quorum. Only respondent Nos 2 to 4 are first directors of the Company (M.Jaipal Reddy and Venugopal Reddy P.Sudhir)

A notice dated 28th February, 2011 (page 234 of CP) was given by the Chairman by proposing to conduct a meeting of Board of Directors of the company to be held on 11.03.2011 at 11.30 and, one of business to proposed to be conducted mentioned at S. No. 06 is 'Any other business with the permission of the Chair. Accordingly, all the four Directors including the petitioner were present on that day and transacted the business as proposed. As Mrs. A.S Laxmi (Respondent No. 5) has already given a notice dated 8.3.2011 to the company calling for extraordinary general meeting of the shareholders within the time specified under the provisions of companies act, 1956 to consider a resolution to remove Sh. V. Niranjan Reddy, the Petitioner herein as the Director of the company. So this issue of requisition of Ms. A.S.Laxmi proposing to remove the petitioner as Director was also discussed and decided to call ordinary General Meeting on 05.04.2011 at 11.00 am to consider the same. So it was decided to call ordinary General Meeting on 05.04.2011 at 11.00 am to consider the same. The Petitioner himself has filed the attendance register of the said Board Meeting (Pg 235 of CP Material papers), wherein all the four Directors including the Petitioner was present.



17. It is to be noted that as per Article 27 of Articles of Association, a written notice of at least seven days (unless a shorter period consented to by all the members who are holder of equity shares) of every General Meeting. A General Meeting can be called by the Managing Director or the by Board. And two members personally present shall form a quorum. Only respondent Nos 2 to 4 are only first directors of the Company namely M.Jaipal Reddy, Venugopal Reddy and P.Sudhir. The Company has already given sufficient notice to all the share holders including the Petitioner and, it is an admitted position that the petitioner too was present during the two meetings in question.

17. The Company has also furnished a copy of the notice dated 08.03.2011 of Ms A.S.Laxmi to the Petitioner asking him to give his explanation/response to the notice. It is not in dispute that the Petitioner has received the said notice and submitted his explanation dated 4th April, 2011 by interalia contending as follows;

- i) that he was appointed as a Director for life and as such he cannot be removed;
- ii) though the company is named as private limited company, it is being run as a quasi-partnership with equal shareholders;
- iii) a suit bearing OS No. 832/2010 was still pending;
- iv) that A.S Laxmi has never raised any objection against him as a Director and she was not aware of what was going on in the Company etc .



- v) Therefore, he has submitted that removing him from directorship would be disrespect to the court proceedings

18. A notice dated 22.3.2011 was issued by the company to all the shareholders requisitioning ordinary general meeting of the shareholders of the company to

be held on 5th Apr, 2011 at 11 am. The agenda for the meeting was removal of Mr. Niranjana Reddy as a Director of the Company. An explanatory statement in accordance with S. 173 (2) of the Companies Act, 1956 was also enclosed to the notice. Accordingly, the Ordinary General meeting of the shareholders of the company was held on 05.04.2011 at administrative office at Flat No. 304, C Block, KantiShikara Apartments, Somajiguda, and Hyderabad at 11am. All the shareholders including the petitioner herein were present and the resolution to remove the petitioner was approved by 80% of the shareholders with immediate effect and, the Petitioner has walked out of the meeting. (Pg 240 of CP Material papers). The Petitioner herein along with other shareholders namely, S. Jaypal Reddy, V. Venugopal Reddy were physically present and P. Sudhir and AS Laxmi were represented by P. Buchi Prasad & A. Ramesh respectively (Pg 241 of CP material papers). Accordingly, the Petitioner was removed and the required Form 32 was uploaded to the MCA portal intimating the cessation of the petitioner as Director of the Company.

19. The above circumstances clearly discloses that the petitioner was aware of both the board meeting dated 11.3.2011 and shareholders ordinary general meeting dated 5.4.2011 and, he was also physically present in both the meetings. However, for the reasons best known to petitioner, he has submitted a letter dated 4/5th April, 2011, which was received by the company on 5.4.2011

at 11.40 am i.e. after the meeting removing him as Director was over. The letter is an afterthought and, it would not have bearing on the issue in question. We are convinced that he board meeting as well as ordinary general meeting were conducted strictly in accordance with law and, there is no violation of principles



of natural justice. Moreover, admittedly, the company is a private limited company and, cannot be called a quasi-partnership firm as contended by the Petitioner. And, the Petitioner can be removed by adopting proper course of action in Accordance with articles of Association and relevant provisions of companies Act, 1956. Hence, the removal of Petitioner as director is held to be in order.

The fifth Respondent issued a notice/complaint dated 08.03.2011 to remove the Petitioner as a Director. This issue of the removal of the Petitioner was discussed in the Board Meeting held on 11.03.2011 under the caption "any other Business". Further she also did not attend the EGM in person in which the Petitioner's removal was to be discussed. It is surprising that a person who made a complaint/notice to remove a Director, chose not to attend the EGM in person. Further, from the available records, it is also not clear as to when the 5th Respondent became shareholder of the 1st Respondent Company

20. The next question is whether the Petitioner has come to this Tribunal with clean hands in order to claim equitable relief under Section 397/398 of Companies Act, 1956. In this context, it is necessary to refer the legal notices dated 8th April, 2013 got issued by the petitioner through his Advocate Shri Govind Reddy Mandadi to D.Nitin Kumar Reddy and Ravikanth Gajula , who are purchasers of plots of the Company . The petitioner through the said notices has threatened them with legal consequences if they proceed with purchasing of the plots of the Company since a suit bearing OS No. 832 of 10 and the present petition were pending.

As stated above, OS No. 832 of 2010 was filed before IInd Addl. District Judge, RR District by seeking a judgement and Decree against the Defendants(



against the Company and its Directors) permitting his to participate in day to day affairs of Company and to direct the defendants not to take any decision without participation of plaintiff(the petitioner herein) He has also filed IA No. 90 of 2011 in OS No. 832 of 10 by seeking to grant an ad-interim injunction restraining the respondents/defendants from alienating, creating any charge or any 3rd party interest in the suit schedule property pending disposal of the suit. However, the said IA was dismissed by the Court by an order dated 20th September, 2011, by holding that the petitioner failed to make out prima-facie case, balance of convenience and irreparable loss in his favour.

The above circumstances clearly show that the petitioner is bent upon to disturb the functioning of the Company by abusing the process of law by filing cases on baseless grounds for his selfish ends without any legal basis. We held that the petitioner has not come to the Tribunal with clean hands to claim any benefits as prayed for in the present petition and therefore he is not entitled for any relief as prayed for. We further held that the ratio as held in the judgements, relied upon by the respondents, as discussed supra is applicable to the present facts and circumstances of the case.

21. In the above facts and circumstances and the law as discussed above, we are of the considered opinion that the petitioner has failed to make out any case so as to grant any relief as prayed for in the C.P. No. 59 of 2011. In the result, the Company petition fails and, accordingly dismissed and, all CA's if any pending, stand disposed of.

However considering the fact that the Petitioner is also having equal shareholding of 20% in 1st Respondent Company and has invested an amount



of Rs. 40.91 lakhs as unsecured loans as per Balance Sheet for the Financial Year 31.03.2010, whereas, in the same Financial Year other Directors viz Sh. P Sudhir, Sh. S Jaipal Reddy, Sh. V. Venugopal Reddy and Mrs. AS Laxmi have given Rs. 62.71 lakhs, Rs. 35.37 lakhs, Rs. 28.57 lakhs and Rs. 38.50 lakhs respectively as unsecured loans. To protect his interest in the Company (since he was removed as a Director), towards the loan granted/investment made in the 1st Respondent Company; in the interest of the Petitioner and on just and equitable grounds, we direct the 1st Respondent Company and other Respondents to invite the Petitioner as a Special Invitee for all the Board Meetings in which any agenda having financial implications are being discussed.



No order as to costs.

Sd/-

RAVIKUMAR DURAISAMY

MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68