

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

CP No. 95 of 2012

(T.P. No. 91/HDB/2016)

Date of Order: 06.01.2017

Between:

1. Sh. Sunil Kumar Gupta
H.No. 18-215/39/1
P.G Road
Secunderabad – 500003
2. Smt. Susheela Gupta
W/o Sh. Sunil Kumar Gupta
H.No. 18-215/39/1
P.G Road
Secunderabad – 500003

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

... Petitioners

And

1. Jyothi Vishnu Pharma Pvt Ltd
4-1-1058 to 1061
1st Floor, Alekhya Jagdish Chambers
Boggulakunta, Hyderabad – 500001
2. Sh. Suresh Kumar Gupta
S/o Sh. Hari Prasad Gupta
R/o H.No. 18-215/39/1
P.G.Road, Secunderabad – 500003
3. Sh. Nitin Gupta
S/o Sh. Suresh Kumar Gupta
H.No. 18-215/39/1
P.G. Road, Secunderabad – 500003



..... Respondents

Counsel for the Petitioners:

Dr. S.V. Ramakrishna

Counsel for the Respondents:

Sh. Y Suryanarayana

CORAM:

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

Hon'ble Sh. Ravikumar Duraisamy, Member (Technical)

ORDER

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

1. The Company Petition bearing No. 95 of 2012 (hereinafter called as 'Company Petition') was initially instituted in the then Hon'ble Company Law Board, Chennai (CLB) in November, 2012. The case was taken up by the CLB and several proceedings have been taken place in the case and the same was still pending disposal. 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 during July, 2016 as it falls under the jurisdiction of this Bench. Hence we are deciding it.

2. The Company Petition was filed in November, 2012 in the then Hon'ble Company Law Board and it was adjourned several times before CLB and pending final disposal. The case was listed before this Bench initially on 29.07.2016. However, only the Counsel for Petitioner appeared and none appeared for the Respondents. So the case was again listed 24.08.2016 and both the counsels submit that they want one more opportunity to explore possibility of settlement. Accordingly, the case was listed on 14.09.2016. The case was subsequently listed on 14.09.2016, 28.09.2016, 05.10.2016, 07.10.2016, 01.11.2016, 18.11.2016, 08.12.2016, 09.12.2016 and 30.12.2016.



The case was adjourned from time to time on one pretext or the other at the instance of either of the learned counsels for the parties. Only on 30.12.2016, both the Learned Counsels expressed readiness to argue the case and concluded their arguments and thus, the case was reserved for judgment.

3. The Company Petition was filed under Section 397, 398, 399, 402, 403 and 237 read with Schedule XI and other Applicable Provisions of Companies Act, 1956 by interalia seeking to declare that the removal of Petitioner No. 1 as Director as null or void; to declare the alleged allotment of shares of 40000 allotted to Respondent No. 2 and 3 in the Form 2 dated 19.03.2012; to restrain the Respondents from holding any Board Meeting without giving seven days' notice by Registered Post to Petitioners accompanied by all the agenda, etc.
4. The brief contents as set out in the Company Petition by the Petitioner are as follows:
 - a. Jyothi Vishnu Pharma Private Ltd (First Respondent and hereinafter referred to as Company) was incorporated in state of Andhra Pradesh on 3rd August, 1977 and the Petitioners along with others including second Respondent are shareholders of the company.
 - b. The first Petitioner and second Respondent are also Directors of the Company. Since Shri. Hari Prasad Gupta, Managing Director is



physically disabled, the second Respondent used to act as whole-time Director and thus managing affairs of the Company.

- c. The first Petitioner and second Respondent are sons of Sh. Hari Prasad Gupta and all other shareholders are also family members being wives and children of the Petitioners and Respondents.
- d. The first Petitioner is holding 33% of paid-up equity shares and is the Director of Company drawing remuneration regularly for past many years along with second Respondent. Since, the father of Petitioner, Sh. Hari Prasad Gupta was physically disabled, the second Respondent started indulging in illegal activities of the Company like fraud, criminal breach of trust, cheating, and falsification of records by creating and uploading them with MCA portal, Government of India, by not conducting Board Meetings, AGMs, etc.
- e. The Petitioner came to know that the second Respondent has filed false Form No. 32 in January, 2012 showing patent lie that he has resigned with the effect from 02.01.2012 as the Director of the Company basing on false resolution No.04 dated 02.01.2012. It is also stated that the Respondent No. 2 has also uploaded Form no.2 basing on the vexatious board meeting held on 19.03.2012 by allotting 20000 equity shares each to second and third Respondent.
- f. It is further stated that the first Petitioner got issued a legal notice through his counsel, dated 30th June, 2012 requesting second Respondent to restore the Directorship of the first Petitioner and also to cancel the fake



allotment of total equity shares of 40000 shares to second and third Respondent and pay remuneration, etc.

- g. In pursuant to above legal notice, the second Respondent through his counsel got issued a reply to the above legal notice by interalia stating that the Petitioner expressed his intention to resign from the Directorship of the Company orally and accordingly, necessary resolution was passed and thus uploaded Form 32. Therefore the petitioner contends that it is the best example of second respondent oppressing the minority shareholders and perpetrating acts of mismanagement against the interest of shareholders of the Company and the Company itself. The Petitioner also denied the above contentions in the said legal notice vide his reply, 14.07.2012. The Petitioner further states that even though Sh. Hari Prasad Gupta, the father of Petitioner and second Respondent, is still a Whole-Time Director of the Company, the second Respondent is signing as Managing Director by usurping the powers of Managing Director and misusing the funds of the company by signing cheques.
- h. It is also stated that Petitioner No.1 has also written a letter to Company banker namely Syndicate Bank, NS Road, Hyderabad dated 03.02.2012, intimating about the above irregularities being committed by the second Respondent without proper authorization, and thus requested the bank to stop forthwith the operation of bank account of the Company but to no avail.
- i. The Petitioner avers that he never received any notice of Board meeting and AGMs, and infact they failed to conduct any such meetings, inspite of repeated request from Petitioners and thereby the Company violated



several provisions of Companies Act, 1956. The Petitioner specifically denied that there was no resignation at all and, in any case, the Director cannot be removed by so-called oral resignation. And allotting the increased shares of the Company only to the father and son (Respondent No. 2& 3) excluding any other existing shareholders including the Petitioners is nothing but controlling the affairs of the Company illegally by those people. Hence, the Petitioner prays that the Company Petition be allowed as prayed for.

5. A joint counter dated 9th December, 2014 was filed by second and third respondent by interalia contending as follows:
 - a. The Petitioner failed to satisfy the pre-requisite conditions to maintain a Petition u/s 397 & 398 of the Companies Act, 1956 and they also failed to make out a case to prove that the affairs of the Company are being mismanaged and the Petitioners are being oppressed. However, the Petitioners failed to prove that the Company has committed any such acts.
 - b. They further submit that the Petitioner failed to substantiate the allegations made in the affidavit with any documentary evidence. They further stated that the Petitioners suppressed the existence of Memorandum of Understanding (MoU) dated 16th July, 2012 entered by and between 1st Petitioner and 2nd Respondent and resignation letter dated 4th July, 2013. Hence they contend that the Petitioner has not come



to the Tribunal with clean hands and thus they are not entitled to equitable reliefs.

- c. They further stated that the company was incorporated in 1977 by Sh. Hari Prasad Gupta & others and the 1st Petitioner and 2nd Respondent joined the Board of Directors in the year 1981. It was further stated that it was 2nd Respondent, who was instrumental for the growth of the Company and first Petitioner did nothing for its growth except drawing remuneration. Since Sh. Hari Prasad Gupta was physically disabled for more than 3 years, it is Respondent No. 2 & 3, who are actively working for the growth of the Company.
- d. It is further stated that a family settlement was arrived in December, 2011 amongst the family members in the presence of Sh. Hari Prasad Gupta. According to this settlement, the business and properties owned by family members will be distributed amongst the brothers ie. 1st Petitioner and 2nd Respondent as per the informal understanding arrived. As per the said understanding, the 1st Petitioner agreed to resign from the Board of the Company and the second respondent also agreed to have resigned from the partnership firms that were to be vested with first Petitioner. Due to the above understanding, the second Respondent filed the Form 32 with the RoC communicating the resignation of first Petitioner as director from the Board of Directors of the company.
- e. It is contended that the first Petitioner has siphoned off the money of the company. When the Respondents started questioning the Petitioner about the illegal activities, he resorted to several proceedings including the present company petition. And that since the company was in need of the



funds, the second and third Respondent arranged the required funds and thus shares were allotted to them for the money they have contributed. Hence there is no illegality in allotting the impugned shares to respondents. Hence, they prayed that the Company Petition is liable to be dismissed.

6. Heard Dr. S.V. Ramakrishna the learned counsel for the Petitioners and Sh. Y. Suryanarayana the learned counsel for the Respondents. We have carefully perused all the pleadings filed by both the parties along with documents filed in their support.

7. Sh. S.V. Ramakrishna, Learned Counsel for the Petitioners, while reiterating various contentions raised in Company Petition has further submitted that there is no dispute or denial on the part of Respondents with regard to the appointment of the first petitioner as Director and the dispute arose only with regard to alleged oral resignation stated to have been made by the 1st Petitioner. He further submitted that there are no Board Meetings at all conducted by the Company. All the actions of the Company are on the basis of the alleged oral agreements, which cannot be the basis to take into consideration by court of law. He further stated that basing on the alleged Board Meeting(s), the impugned allotment of 40000 shares were made to two persons (2nd and 3rd Respondents) and this is nothing but to reduce the shareholding of 1st and 2nd Petitioner into small minority. Hence, he submitted that this is nothing but oppressive



act on the part of respondents. Hence, he prayed that the Company Petition has to be allowed as prayed for.

8. Per contra, Sh. Y. Suryanarayana, Learned Counsel for the Respondents, submits that while reiterating the contentions raised in reply filed by the Respondents that the Petitioners have suppressed the material documents viz., MoU dated 16th July, 2012 and the resignation letter dated 4th July, 2013. He further submits that the Petitioner cannot blow hot and cold at the same time and having agreed and signed the MoU and it is binding on the Petitioner. The Learned Counsel further submits that even while the case is pending, they have also tried to settle the issue amicably but due to various reasons, both the parties could not come to a settlement. He further submits that the petitioner failed to make out even a prima-facie case to interfere in this matter by the Tribunal.

9. In light of above discussion of the case, the main points for consideration in the present case are as follows:

- a. Whether the present Company Petition is maintainable u/s 397 and 398 of Companies Act, 1956;
- b. Whether removal of the 1st Petitioner as the Director basing on the alleged oral resignation and the same is in accordance with law;
- c. Whether the allotment of 40000 shares to Respondent No. 2 and 3 is legal;



d. Whether any Board Meeting has been conducted and whether notice has been given for such Board Meeting(s).

10. The averment of the petitioners that they are holding 6,600 shares together of the Company, which constitute 33 % of total issued capital. When further allotment of shares in question in the present petition, it cannot be said the present petition is not maintainable. Hence, we hold that the present petition is maintainable.

11. It is not in dispute that the 1st Petitioner and 2nd Respondent are the sons of Sh. Hari Prasad Gupta; Managing Director of the Company and 3rd Respondent is the son of 2nd Respondent. It is also not in dispute that 1st Petitioner has not submitted any resignation letter and it is only alleged to be oral. While the 1st Petitioner was removed as the Director on 2.1.2012, the Respondents have enclosed a resignation letter dated 04.07.2013 which is stated to be in confirmation of oral resignation of the 1st Petitioner as the Director of the Company.

12. Under the Company Law, there is no word like resignation much less oral and the Directors of the Company will retire by rotation/ life, etc. So, we are not inclined to accept the contentions of the Respondents that the first petitioner resigned as Director orally and it cannot have legal sanction. And the subsequent letter dated 04.07.2013 confirming the



alleged oral resignation cannot be accepted and it was contended it was obtained under duress by family members.

13. So far as conducting the Board Meeting is concerned, the Respondents have not filed any documents to show that they have conducted any Board Meeting of the Company and there is no notice at all to the petitioner. While uploading Form 32, they did not enclose the alleged resolution passed by the Board accepting the resignation of 1st Petitioner. When the respondents failed to substantiate their contention that the alleged MoU was not implemented at all, so the purported conditions mentioned in MoU cannot be relied upon.

14. First of all, 1st Petitioner cannot be removed in the manner the Respondents have adopted and it is illegal and violative of Principles of Natural Justice. The Respondents cannot allot the shares to themselves without making the Petitioner, part of the process for increasing the share capital. The allotment of increased 40,000 shares were allotted to none other than Respondent No. 2&3 and it is clear act of arbitrariness and burdensome and oppressive act to make the Petitioner further pushed as minority shareholder depriving the legal rights of the petitioners.



15. It is also admitted fact that Sh. Hari Prasad Gupta is still Managing Director of the Company under the guise of physical incapacity, 2nd Respondent has taken over the reins of the company and mismanaging

the affairs of the Company. The counter allegation made by Respondents that 1st Petitioner himself was responsible for siphoning off the funds of the company cannot be taken into consideration as it is the case of the Petitioners that several acts of oppression and mismanagement has been done by Respondents.

16. In the result, the Company Petition is disposed off with following direction:

- a. We set aside the removal of 1st Petitioner as Director and also setting aside the impugned allotment of 40,000 shares to Respondent No. 2 & 3 by granting liberty to Company to follow the procedure prescribed under Articles of Association of Company and Companies Acts, 1956/2013 to allot further shares if any in future.
- b. We further direct the Respondents to convene a Board meeting of the Company, duly giving notice to 1st Petitioner along with others, within in a period of 4 weeks from date of receipt of copy of the order.
- c. The Petitioner is directed to cooperate with respondents for smooth running of affairs of the Company and settlement of all issues, without taking recourse to unnecessary legal course of action.

No order as to costs.



Sd/-

RAVIKUMAR DURASAMY

MEMBER (T)

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OF THE ORIGINAL**

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)

V. Annapoorna
V. ANNA POORNA