

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**HYDERABAD BENCH, AT HYDERABAD**

**C.P. No. 85 of 2009**

**(T.P. No. 46/HDB/2016)**

**Date of Order: 17.01.2017**

**Between:**

1. Smt. Anita Kedia, W/o. Jitender Kedia,  
R/o. 5-9-30/1/4/3, Road No.5, Basheerbagh,  
Hyderabad – 500063

.... Petitioner

And

1. Salasar Hanuman Agrotech Foods Pvt. Ltd.,  
A company incorporated under the  
Companies Act, 1956 having its registered  
Office at plot No. 48, Sri Krupa Market,  
Mahaboob Mansion,  
Malakpet, Hyderabad – 500036.  
rep. by its Director Dr. Mahesh Kumar Kedia.
2. Dr. Mahesh Kumar Kedia,  
R/o H.No. 5-9-30/1/4/3,  
Road No.5, Basheerbagh,  
Hyderabad – 500063.
3. Sri Ajay Kumar Kedia,  
H.No. 5-9-30/1/4/3,  
Road No.5, Basheerbagh,  
Hyderabad – 500063.
4. Smt. Anita Kedia, W/o. Dr. Mahesh Kumar Kedia,  
R/o H.No. 5-9-30/1/4/3, Road No.5,  
Basheerbagh, Hyderabad – 63.
5. Mr. Ajay Kumar Kedia, S/o. Dr. Mahesh Kumar Kedia,  
R/o H.No. 5-9-30/1/4/3, Road No.5,  
Basheerbagh, Hyderabad – 63.
6. Mr. Ajay Kumar Kedia (HUF),  
R/o H.No. 5-9-30/1/4/3, Road No.5,  
Basheerbagh, Hyderabad – 63.



7. Mrs. Komal Kedia, W/o. Ajay Kumar Kedia,  
R/o H.No. 5-9-30/1/4/3, Road No.5,  
Basheerbagh, Hyderabad – 63.

8. Mr. Shaurya Kumar Kedia, S/o. Ajay Kumar Kedia,  
R/o H.No. 5-9-30/1/4/3, Road No.5,  
Basheerbagh, Hyderabad – 63.

Minor represented by Ajay Kumar

...Respondents

Counsel for the Petitioner

....Shri. V.B. Raju

Counsel for the Respondent No. 1 to 3

....Shri. Arun Kumar Malani

**CORAM:**

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

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

**ORDER**

(As per Rajeswara Rao Vittanala Member(J))

1. The Company petition bearing No. 85 of 2009(which is hereinafter referred to as Company petition) was initially filed in October, 2008, before the then Hon'ble Company Law Board, Chennai Bench, Chennai (CLB). Since then various proceedings were taken place before CLB in the case and, it was pending for its final disposal. On the constitution of National Company Law Tribunal (NCLT), Hyderabad Bench for the cases pertaining to states of Andhra Pradesh & Telangana, the case is transferred to Hyderabad Bench of NCLT in the month of July, 2016. Accordingly, the case was taken up on the records of this Bench, and listed on 25.07.16, 9.08.16, 23.08.16, 20.09.16, 18.10.16 & 24.10.16 for final hearing. The counsels of both sides takes time for one reason or the other, and both the learned counsels got ready and argued the case only on 24.10.16. After hearing the case, the learned counsels took time



to file their written brief of arguments and thus subsequently filed their written briefs.

2. The Company Petition was filed by Smt. Anita Kedia, U/s 397 & 398 of the Companies Act, 1956, by alleging several acts of oppression and mismanagement of the affairs of the company by the Respondents, and interalia sought declaration; that the impugned allotment of 4,09,000 shares of Rs. 10/- each on 31.03.2009 and special resolution passed at the Extraordinary General meeting held on 31.03.2009 for increasing authorised capital as illegal and void; to declare the Respondent Nos. 2 & 3 are unfit to function as Directors of the company; to direct full and complete investigation into the affairs of the company; to surcharge 2 & 3<sup>rd</sup> Respondent to make good such amounts as may result from such investigation etc.

3. The Petitioner has made the following material averments in the Company Petition in support her case:

- i. The present company Salasar Hanuman Agrotech Foods Pvt. Ltd. , (which is hereinafter referred to as “ the Company” for brevity )was initially incorporated under the provisions of Companies Act, 1956 in the name and style as Shruti Stocks Limited on 4<sup>th</sup> April 1995 under the provisions of the Companies Act, 1956. And the registered office of the company is situated at Plot No. 48, Sri Krupa Market, Mahaboob Mansion, Malakpet, Hyderabad – 500036. Later on the company changed its name to the present name, after obtaining the



approval of the Central Government vide letter no. RAP/TA.VI/Sec.21/19916, dated 10.07.2003. A fresh certificate of incorporation, consequent of the above change of the name, was issued by the Registrar of Companies on 10<sup>th</sup> July 2003. The company was converted into private limited company by virtue of special resolution passed under Sec.31 of Companies Act, 1956. Consequently a fresh certificate was also issued by the Registrar of the Companies AP Hyderabad on 1<sup>st</sup> August 2003.

- ii. The Authorised share capital of the company is Rs. 50, 00,000/- divided into 5 lakhs equity shares of Rs. 10/- each. The issued, subscribed and paid-up capital of the first respondent company as on 31<sup>st</sup> March, 2008 is Rs. 17 lakhs divided into 1,70,000 equity shares of Rs. 10/- each. The petitioner is holding 1,30,700 equity shares of Rs. 10/- each, which is more than 1/10<sup>th</sup> of the issued capital and paid 17 lakhs which accounts for 76.88% of the share capital of the Company. Hence, the petitioner contends that the present petition is maintainable under section 397 & 398 of the Companies Act, 1956.

- iii. The business of the company in the initial stage was to carry on business as share broker, underwriters, agents etc. Since, the business of finance and investment are not remunerating, the company has diverted its activities to that of trading and importing edible oils.

- iv. The petitioner and her husband were promoters of the company, and subscribed hundred each equity shares of Rs. 10/- at the time incorporation of the company. And her husband was the first Director and also subscribed to the memorandum and Articles of Association



of the Company. Her husband and the second respondent are brothers and 3<sup>rd</sup> respondent is the son of respondent no. 2. And other respondents are also closely related.

v. The petitioner contends, while visiting the site of MCA, she came to know that Extraordinary General Meeting (EGM) of the share holders of the Company was allegedly held on 30<sup>th</sup> March, 2009 for increasing the authorised share capital from Rs. 50 lakhs to Rs. 60 lakhs i.e. by adding 10 lakhs additional capital. The petitioner contends she was put in the dark about the affairs of the Company and thus not aware of affairs of the company. A special resolution is required for amending any of the Articles of the Association of the Company as per requirement of Section 31 of the Companies Act, 1956. Since the petitioner was holding 76.88% of the share capital of the company and there was no possibility of passing any resolution without her support, the so-called meeting was alleged to have been conducted without notice to her. The increased shares were allotted to wives and son of second respondent and also to Ajay Kumar Kedia (HUF) and the allotment was also filed with Registrar of Companies.

vi. The petitioner contends that as per Article 13 of Articles of Association of the Company, new shares ought to be issued subject to provisions of sections 85 to 88 of the Companies Act, 1956. Article 14 of the Articles of Association of the Company also states that provisions of Section 81 of the Act shall regulate any increase in the subscribed capital of the company by issue of new shares.



Article 13 & 14 of the Articles of the Association and Section 81(1)(a) of Companies Act, 1956 are extracted below:

“13. Subject to the provisions of Section 85, 86, 87 and 88 of the Act: the new shares shall be issued at such time or times and on such terms and conditions and with such rights and privileges as may be specified in the resolution creating the shares.”

“14. The provisions of Section 81 of the Act shall regulate any increase of the subscribed capital of the company by issue of new shares.”

81(1)(a) reads as “any further issue of shares may be offered to any persons if special resolution to that effect has been passed by the company in general meeting.”

- vii. The increased shares were allotted to respondent no. 2 & 3 and to their wives and HUF in violation of provisions of Section 81(1)(a). And by virtue of this act, the Company made majority shares holders into minority shareholders and vice versa. And the Petitioner was made a minority shareholder and this is nothing but an act of Oppression by the respondents in carrying out the day to day affairs of the Company. And those shares were allotted at much less value than the face value of the shares of the Company. After making the petitioner a minority share holder, the Company affairs are being run as per whims and fancies of respondent No. 2 to 6, that too, in utter violation of Articles of Association and applicable provisions of Companies Act, 1956





- viii. It is further contended by the Petitioner that she came to know further increase of share capital from Rs. 60 lakhs to Rs. 100 lakhs by adding 4 lakh equity shares of Rs 10/- each and these shares too were allotted to family members of the second & third respondents.
- ix. It is further alleged that the respondents never issued any notices for any meeting of the Company for taking decisions for increasing share capital as mentioned above and all the documents uploaded on the MCA Portal are false and concocted.
- x. The respondents also denied the request of the Petitioner to make available to her statutory records violating provisions of the Companies Act.
- xi. It is further contended as per balance sheet as on 31.03.2008 a sum of Rs. 5, 14, 19,948/- has been advanced to various group and sister concerns of the 2<sup>nd</sup> & 3<sup>rd</sup> respondents as against Rs. 40, 58,667/- in the year 2007. And the details were not given in the balance sheet and no resolutions to that extent were passed. The 2<sup>nd</sup> & 3<sup>rd</sup> respondent siphoned off the funds of the Company.
- xii. It is further alleged that in order to secure loans from the State Bank of Hyderabad in the month May 2007 and also availed over draft (OD) facilities for an extent of Rs. 200 lakhs by mortgaging the family properties of the Petitioner and those funds were also diverted.
- xiii. The respondent no. 2 & 3 are not acting as trustees of the share holders of the Company. Though the annual turnover of the Company for the year ending 31<sup>st</sup> March 2008 was more than Rs. 21 crores, the Company is debiting the expenditure and showing only net profit of



Rs. 12,86,043. All these acts indicate mismanagement of the affairs of the Company by oppressing the rights of the shareholders of the Company.

- xiv. The Petitioner has thus submitted that the above acts of respondents would indicate that they are harsh, burdensome and wrongful. And affairs of the Company are being conducted in a manner oppressive and prejudice to its members and the petitioner in particular and also against the interest of Company itself. She further submits that the above facts would justify the making up of winding up order on just and equitable grounds but the winding up order would unfairly prejudice to the interest of the petitioner herein and other members and the Company and thus she sought the Tribunal equitable relief under the sections as mentioned above.

4. A counter dated 11<sup>th</sup> Dec, 2009 was filed by Dr. Mahesh Kumar Kedia (the respondent no. 2 herein), on behalf of respondent no. 1 company and on his behalf. The sum and substance of the contentions raised in the counter are as follows:

- a. It is stated that the subscribed and paid-up capital of the company as on 31<sup>st</sup> Mar, 2008 was Rs. 17 lakhs which are proportioned by 1.17 lakhs equity shares of Rs. 10/- each but he has denied that the petitioner had 1/10<sup>th</sup> of issued share capital holding 1,30,700 equity shares of Rs. 10/- each, so it is contended that the present company petition under section 397 & 398 was not maintainable and it is liable to be dismissed on this ground itself.



- b. It is admitted that the petitioner and her husband are shareholders of the company but it is denied that they are the first Directors of the Company.
- c. It is denied the allegation of the petitioner with regard to the violations of the Articles and Memorandum of Association of the Company as well as Section 31 of the Companies Act, 1956. It is further contended that notice of general meeting held on 30<sup>th</sup> March, 2009 was intimated to all including the petitioner. However, they have abstained from the meeting and making false allegation before this Tribunal.
- d. All the relevant records of the company were submitted to the Registrar of the Companies and, they were made available to the petitioner whenever asked for verification. However, the petitioner is making false allegations contrary to the above fact.
- e. It is denied that an amount of Rs. 5,14,19,948/- was shown as advances to various groups or sister concerns . In fact, the same was paid to various parties as advances towards purchases of goods in exercise of uplifting the Company's image and create financial soundness of the Company. So the allegation of the petitioner is totally false. It is further alleged that the Company Law Board is entertaining the petitions under fictitious grounds and unnecessary interference with the managerial aspects of the Company management.
- f. It is stated that the Company, in fact had advanced Rs. 2,65,00,000/- to the petitioner Company in May 2009 from the Companies funds as a temporary short time arrangement to meet with their financial crises at their request. Instead of refunding the said amount, the petitioner is trying to side track the issue by saying that it was an adjustment towards the

booking of supply of sponge iron. The petitioner is trying to play fraudulent role to defraud the respondent Company with a bad intention to hamper its growth. The petitioner also has filed cases both in High Court as well as in Criminal Courts, which are still pending. Hence, he prayed the petition should be dismissed with costs.

5. Smt. Anita Kedia (the petitioner herein) has filed a rejoinder dated 15<sup>th</sup> Mar, 2010 to the reply filed by the respondent no. 1 & 2 by interalia contending as follows:
  - a. The petitioner has reiterated that the subscribed and paid up capital of the Company as on 31<sup>st</sup> March, 2008 of the first respondent company was Rs. 17, 00,000 divided into 1, 70,000 equity shares of Rs. 10/- each and the petitioner herein was holding 1, 30,700 equity shares of Rs. 10/- each and hence she is entitled to file the present petition U/Ss. 397 and 398 of the Companies Act. This fact has also been admitted by the respondents in para 6 of their counter. It is clarified that only her husband was the first Director of the Company and it is a fact too.
  - b. She has stated that she and her husband have made various initiatives to settle the matter but the respondents have filed several cases before various courts to harass them.
  - c. The petitioner further reiterated that she has never received any notices calling for annual general meeting of Company held on 30<sup>th</sup> March, 2009. The respondents failed to produce any evidence to show that any notice was acknowledged by the petitioner. The respondents can be put to strict proof of the contention that they have sent any notices to Petitioner. The



respondents have violated relevant Articles of the Association of the Company and relevant provisions of the Companies Act as stated above. It is also denied that statutory records made available whenever asked for the same for verification.

- d. It is denied the averment of the respondents that they have not advanced the said Rs. 5,14,19,948/- to various group of Companies of the respondents and the respondents failed to give any details of the said amount.
- e. Therefore, the petitioner submits that it was a clear case of oppression and mismanagement of the affairs of the Company and thus prayed the Tribunal to allow the petition as prayed for.

6. Heard Shri. V.B. Raju learned counsel for the petitioner and, Shri Arun Kumar learned counsel for the respondent nos. 1 to 3. We have carefully perused all the pleadings made by the parties along with material documents filed in their support.

7. The learned counsel for the petitioner, while reiterating averments made in the company petition, has further submitted a written arguments dated 28.10.2016. In the written submissions, the learned counsel interalia contends as follows:

- i. The Company petition was filed under Sections 397 & 398 of the Act as the respondent no. 2 was conducting the affairs of the Company in a manner prejudicial to the public interest, oppressive of the members and mis-managing the affairs of the company.



- ii. It is reiterated that the petitioner was holding 1,30,700 equity shares of Rs. 10/- each out of the total paid up capital of Rs. 17,00,000/- which accounts for 76.88% of the share capital of the company. Though the company was incorporated to carry on the business of share broking, dealing in shares and stocks etc., it is presently carrying on the business of trading in oil, steels, etc.
- iii. It is stated that the petitioner came to know about alleged EGM stated to be held on 30<sup>th</sup> March, 2009 & 15.02.2009 to increase the authorised share capital without giving any notice to the petitioner. By virtue of the impugned allotment of increased shares, the shareholding percentage of the petitioner was reduced from 76.88% to 22.51% making her a minority shareholder. And respondent no. 2 & 3 had diverted funds of the company to their own sister concern / group companies. And the impugned illegal allotment of shares is a continuous cause of action facilitating the respondents to perpetuate their oppressive acts and mismanagement of affairs of the Company which warrants interference by the Tribunal to set it right those affairs and so as to put an end those things.
- iv. The Learned counsel raises the following acts of mismanagement and oppression of the respondents in conducting affairs of the company contrary to the provisions of the Companies Act.
  - Illegally Convening the Extra Ordinary General Meeting on 31.03.2009 of the 1<sup>st</sup> Respondent Company without notice to the Petitioner for increasing authorized share capital from Rs. 50,00,000/- to Rs. 60,00,000/-.



- Illegally convening the Extra Ordinary General Meeting on 15.07.2009 of the 1<sup>st</sup> Respondent Company again without notice to the Petitioner for increasing of capital from Rs. 60,00,000/- to Rs. 1,00,00,000/-.
- Diversion of funds to the extent of Rs. 5,14,19,948/- to various group and sister companies of Respondent Nos.2 and 3.
- Availing of secured loan from State Bank of India in the month of May 2007 to the extent of Rs. 2,00,00,000/- without the calling for a Meeting.

v. The learned counsel further reiterated that the petitioner was never given any notice about the alleged EGM in question and no document in support of their contention that notice was sent was filed by the respondents. It is also further denied the contention of the respondent that no loans and advance have been granted by the Company on the basis of security by pledge of share, debentures and other securities. It is further alleged that the company has diverted funds to the sister concerns and the group companies of the respondent company without any resolutions.

vi. The Learned counsel, therefore pray the Tribunal declare that the affairs of the company are being conducted by the respondent no. 2 & 3 in manner prejudicial to public interest, oppressive of the members particularly the petitioner and mismanaging the affairs of the company and to allow Company petition as prayed for.

8. The Learned counsel for the Respondent No. 2 & 3 has also filed his written submission on behalf of respondent No. 2 & 3 , which were received by the NCLT on 28<sup>th</sup> October, 2016. The following are the brief points raised in the written submission:

- a) There was no violation of provisions of sections 81(1A) of Companies Act, 1956 as alleged by the petitioner and Section 81 should be read in toto and not in isolation and as per Section 81(3)(a), the section itself is not applicable to a private Company. As the Company was converted to a private limited Company way back on 1<sup>st</sup> August, 2003, the shares in question were allotted on 30<sup>th</sup> March, 2009, so provisions section 81(1A) are not applicable to the present case.
- b) The respondents have offered the shares in question to the petitioner to purchase by paying face value of those shares and the Tribunal can also direct the petitioner to purchase the same under the powers conferred under section 242(2)(b) of the Company Act, 2013.
- c) As regards advances Rs. 5,14,19,948 in balance sheet of 31 March, 2008 as against Rs. 40,58,667/- on 31 March, 2007, it is normal business transactions and everything in accordance with law and everything was properly audited .
- d) Allegations regarding mortgages were denied and there are no properties of the company to be mortgaged and those properties belong to respondent No 2 & 3. The contention of mortgaging the properties of petitioner is vexatious and baseless and the





properties of petitioner cannot be mortgaged without her signature and no such signature was taken. In fact, loans were advanced to M/s Shiv Shakti Iron Industries Pvt Ltd (which is petitioner's company) out of company's funds. But these advances were still not refunded and due to this, the Company was on the verge of attachment by the Bank.

- e) Therefore, the learned counsel prays the Tribunal to dismiss the company petition with costs.

9. In view of the above facts of the case, the following principal issues arise for our consideration in order to put an end the affairs of Company complained of :

- Whether the petitioner is holding the required shares to maintain the present company petition ;
- Whether the alleged Extra Ordinary General Meetings stated to be held on 31.03.2009 & 15.07.2009 were really held or not and ,if so, notices to those meetings were issued to the petitioner or not for increasing of capital from Rs. 50,00,000/- to Rs. 60,00,000/-. And further from Rs. 60,00,000/- to Rs. 1,00,00,000/-.
- Whether the petitioner can be directed to purchase the above shares as offered by the respondents

10. So far as the first issue is concerned, the respondent No. 1 in its counter dated 11.12.2009, under para 6, it is clearly admitted and states that no

dispute as such with reference to the contention made under para VI (6) of Company petition, where it is contended by the petitioner that she was holding 1,30,700 equity shares of Rs.10/- each in addition to 100 equity shares, which accounts for 76.88% of Share capital. Hence, it is not correct to contend that the present company petition is not maintainable. We are convinced that the petitioner fulfil the prerequisites for filing the present petition under Section 397/398 of Companies Act, 1956 and we agree with the submissions made by the Respondent Nos. 2 & 3.

11. It is not in dispute that the petitioner was holding majority shares of the Company before the impugned increase of shares were taken place and allotted those shares to the respondents and their relatives. It is unimaginable that important decisions like increase of shares of the Company can be taken without support of majority of shareholders. However, the respondents failed to substantiate their contention that the notices were given to the petitioner.

12. In order to decide any issue in Company matters, Principles of Natural justice are criteria to decide them. In consonance with those principles, there is a standard procedure and requisites of valid meeting in Company law. The first essential requisite of a valid meeting is that it should be called by a proper authority: the Second requirement is a proper notice to members( Section 101 of Companies Act, 1956 and 171, 172 of Companies Act, 1956 deals with the issue of notice in company matters);



another requirements are Quorum ( Section 174 of Companies Act, 1956/ Section 103 of Companies Act, 2013) etc.

13. As discussed above, the Company failed to follow due procedure in taking important decisions like the impugned increase of shares of the Company. The Companies are free to take a decision for increase or decrease of share capital. However, it must be taken by analysing all relevant factors by keeping in mind such decision would mainly benefit Company and its shareholders. In the instant case, the respondents have miserably failed to substantiate its contention that they have followed all relevant Articles of Association and provisions of Companies Act, 1956 in taking the impugned decisions of increasing share capital. On the contrary, surprisingly, the Respondents have come with a counter proposal saying that Tribunal can direct the petitioner to purchase the impugned shares by paying face value.

14. Hence, we are of the considered view that the impugned actions as discussed above would constitute oppressive in nature in which the respondents made the majority shareholder into minority, and thereafter, the respondents are mismanaging the affairs of the Company warranting interference in the issue by the Tribunal. However, we are also of the considered view that ordering to wind up the Company would prejudice the interest of Company, and its shareholders especially the petitioner herein. Hence, we propose to dispose the Company petition with the directions as mentioned below.

15. In the result, the Company Petition bearing No. 85 of 2009 is disposed of with the following directions :

- a) We set aside the impugned allotment made in respect of 4,09,000 shares of Rs, 10/-each on 31.03.2009 and the special resolution passed at the Extra Ordinary General Meeting held on 30.03.2009 for increasing the authorized share capital from Rs. 60,00,000 to Rs.1,00,00,000 ;
- b) We direct to convene a meeting of the Company, after giving suitable advance notice to the petitioner along with other parties, within a period of 4 weeks from the date of receipt of copy of this order ;
- c) We reject other reliefs as asked for ,as we found that they are not substantiated
- d) No order as to costs.

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL



Sd/-

**RAVIKUMAR DURASAMY**

**Member (T)**

Sd/-

**RAJESWARA RAO VITTANALA**

**Member (J)**

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