

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

CP No. 26 of 2009
(TP No. 36 /HDB/2016)

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

Date of order: 10 .01.2017

Between:

Sh. Ch. Koti Ravikiran
S/o Late Dr. Papa Rao, aged 38 years,
R/o Door No. 62-2-23
Patamata Lanka
Vijayawada – 520014

... Petitioner

AND

1. Vijayawada Share Brokers Limited
Registered Office at 31-10-22A
Malaria Office Street, Machavaram,
Vijayawada -520004
2. Mr. D. Ramakishore
S/o D Janardhan Rao, 42 years
Business, R/o B-7
Venkata Balaji Towers
Mogalraipuram
Vijayawada – 520010, Krishna District, A.P
3. Mr. P Surendra Kumar
S/o Janardhana Rao, aged about 48 years,
C/o. Balajee Chemical Supplies
54-7-41, 3rd Road, 4th Cross, Autonagar
Vijayawada – 520007, Krishna District. A.P
4. Mr. K Venkateswara Rao
S/o K. VidyaSagar, aged 43 years
R/o 26-12-18, 2nd Floor
Boddapativari Street
Near Shailja Theatre, Gandhi Nagar
Vijayawada – 520003, Krishna District. A.P



5. Mr. D. Janardhan Rao
S/o D Hanumantha Rao, aged 67 years
R/o TF-8, Venkat Enclave
Opp. Tagore Rice Mill, Tikkel Road
Vijayawada – 520010, Krishna District. A.P
6. Mr. G C S Murthy,
S/o Jagga Rao, aged 57 years
R/o 33-11-21, Netaji Street
Seetharampuram
Vijayawada, Krishna District. A.P
7. Mr. Ch. Rajagopal
S/o Vasudeva Murthy, aged 52 years, Business
2nd Line, Bavajipeta
Vijayawada – 520003, Krishna District. A.P
8. Mr. A. VijayaBhaskar
S/o A. Narayana Murthy, 29 years,
C/o Y. Nagesh, D No. 29-7-48
Vishnu Vardhana Rao Street, Suryaraopeta
Vijayawada – 520003, Krishna District. A.P
9. Mr. T Sreenivas
S/o Late T H Babu Rao, aged 44 years,
R/o No.4, SIRI Apartments
Green Lands Hotel Road
Brindavan Colony
Vijayawada – 520010, Krishna District. A.P
10. Mr. D Mukteshwar
S/o D Janardhan Rao, aged 37 years
R/o S-2 Rampriya Residency
Siddartha Public School Back Gate
Lakshmi Nagar
Vijayawada – 520010, Krishna District. A.P
11. Mr. Mara Ram Nars
S/o M Hanumanth Prasad, aged 43,
Business, 11-15-14/B
Vinnakota Vari Street
Vijayawada – 520001, Krishna District. A.P

12. Mr. MVK Haragopal
S/o Chakrapani, aged 42, 11-25-37
KT Road, Venkata Satya Sai Complex
Vijayawada – 520001, Krishna District. A.P
13. Mr. Allagadda Kiran Kumar
S/o Venkateswara Rao, aged 46,
6-5-73, 5/2 Arundelpet
Guntur
14. Mr. P Koteswara Rao
S/o PV Raghavaiah, aged 45,
R/o 59A-8/10-9A
Maruthi Co-op. Colony, Patamata
Vijayawada – 520006
15. Mr T Naga Kumar
T Mangapathi Rao, 43 years
Business, Happy Dresses
Main Road
Vijayawada – 520001
16. Mr. Konijeti Suresh
S/o Kannaiah, 44 years,
11-9-4, MajjiVari Street
Vijayawada – 520001
17. Mr. T Ratna Srinivas
S/o T.V. Hanumantha Rao, aged 46
27-33-6 GudavalliVari Street
Vijayawada – 520002
18. Mr. B Sainarayana
S/o GSN Murthy, aged 40 years,
16-4-417/1, Fort Road
Besides DCMS Godown
Warangal
19. Mr K Prakash
S/o Venkateswarlu, aged 43,
Main Road, Ponnur
Guntur District

20. Mr. G V N Satish Kumar
S/o G V Subba Rao, aged 38,
Brahmin Street, Ponnur,
Guntur District
21. Mrs K L Uma
W/o Vasudeva Kumar, 49 years
27-43/2
Governopet, Mandapati Street
Vijayawada- 520002
22. Mr. Damodar Rathi
S/o Satyanarayan Rathi, aged 48 years,
11-56-4, Marwadi Temple Street
Vijayawada 520001
23. Hukumchand Jaju
S/o Baukantlal Jaju, Age 57 years
D. No. 3-3-170, Kuthibiguda
Hyderabad – 27
24. Mr. L. Nagabhushanam
S/o Venkateswara Rao, aged 57,
Residing at Door No. 31-10-22A
Malaria Office Street, Machavaram
Vijayawada – 520004, Krishna Dist., AP
25. Mr. Suresh Tatiya
S/o MilapchandTatiya, aged 57 years,
Door No. 11-41-8/A,
Kandula Vari Street,
Vijayawada – 520001, Krishna Dist, Andhra Pradesh
26. S. N. Bhaskar
S/o Dharma Rao, aged 52 years,
Main Road,
Palakole – 534260, Andhra Pradesh
27. Mrs. K.L. Prashanthi
W/o Mr. K. Vishnuvardhan, aged 29,
Door No. 31-10-22A
Malaria Office Street, Machavaram
Vijayawada, Krishna Dist., A.P



28. Mr. L.A. Prasad

S/o Venkateswara Rao, 59 years

Door No. 8/310-D, 7th Line

Rajendra Nagar

Gudivada, Krishna Dist

29. Sh. Jagan Mohan Reddy

S/o Venkataramireddy, aged 47 years,

B-1, Jayasree Residency,

Gayathri Nagar,

Vijayawada – 520010

30. Sh. Tripuramallu Anil Kumar

S/o Venkata Subbarao, aged 40 years,

31-13-18, Potinenivari Street,

Machavaram

Vijayawada – 520004

And

Moghulrajapuram,

Vijayawada

31. Sh. N. Sivaprasad,

S/o Late Lakshmi Narasimhamurthy, aged 42 years,

31-13-18, Potinenivari Street, Machavaram

Vijayawada – 520004

And

Kamakotinagar,

Vidhyadharapuram

Vijayawada – 520012

..... Respondents

Counsel for the Petitioner:

Sh. Abhishek Dash for Sh. V. Hariharan

Counsel for the Respondent Nos. 1 to 23 and 29:

Sh. VS Raju

CORAM:

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

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



ORDER

(As per Rajeswara Rao, Member (J))

1. The Company Petition bearing number 26 of 2009 (which is referred to as Company Petition hereinafter for brevity) was filed by Ch. Koti Ravikiran before the then Hon'ble Company Law Board (CLB) in February 2009. The case was taken up by CLB and, adjourned several times till the case was transferred to this Bench, which is constituted for the states of Telangana and Andhra Pradesh. Subsequent to transfer, the case was listed before this Bench on 5.08.2016, 23.08.2016, 20.09.2016, 30.09.2016, 7.10.2016, 21.10.2016, 4.11.2016, 11.11.2016, 18.11.2016, 28.12.2016 and then finally on 02.01.2017. The case was adjourned on those dates, on one pretext or the other, at the request of either of the counsels of the company Petition. The Tribunal also ordered notice to all the parties vide Notice No. CP No. 26/2009&TP No.36/HDB/2016/681-709 dated 20.09.2016 by Speed Post. Ultimately both the parties got ready and argued the case only on 2.1.2017. Hence, we have heard the matter and reserved for orders on 2.1.2017.
2. The Company Petition was filed under Section 397 and 398 of the Companies Act, 1956 by interalia seeking directions; to set aside the agreement of sale, and the agreement of sale cum GPA in regard with the properties of the 1st Respondent Company executed by the 3rd Respondent, purportedly on behalf of the company in favour of the 30th and 31st Respondents as null and void and not binding on the 1st



Respondent Company; to direct the Respondent Nos 2 to 29 to sell their shares to the Petitioner at a fair value to be determined by this Hon'ble Board, etc.

3. Heard Sh. Abhishek Dash for Sh. V. Hariharan, learned Counsels for the Petitioner and, Sh. VS Raju, Learned counsel for Respondent Nos. 1 to 23 and 29. We have carefully considered various pleadings raised by the parties along with supported material papers.

4. The learned Counsel for the Petitioner submits that Vijayawada Share brokers Ltd (which is referred to as the Company hereinafter) was incorporated as a Public Limited Company on 23.6.1995 and its Authorized share capital is Rs. 3,00,00,000/- divided into 300 equity shares on Rs. 1,00,000/- each. The Petitioner is a shareholder of the Company by holding 34 fully Paid-Up equity shares constituting 15.74% of the Paid up capital of the Company. Hence, he submits that the present petition is maintainable under Section 397, 398 of the Companies Act, 1956. The Petitioner claims that he has purchased 24 equity shares in the year 2006, in addition to 10 equity shares already purchased. So, the transfer of 24 equity shares was duly effected on 27.11.2006.

The learned counsel further submits that when he was prevented from exercising his franchise in regard to election of Directors of the Company on frivolous grounds, the Petitioner along with others also approached various forums to protect the interest of the company. Some of the cases filed are : O.S

No. 554 of 2003 was filed by Mr. D. Janardhana Rao on the file of IV Addl Sr. Civil Judge, O.S No. 827/03 filed by the petitioner, on the file of the III Addl Sr. Civil Judge, etc. He further submits that the Respondent Nos. 2 to 23, by suppressing the suits filed by the Petitioner and others, have filed CP No. 56 of 2002 and got the case disposed of by CLB, Chennai by an Order dated 10.11.2006.

5. The learned Counsel for the Petitioner further submits that Respondent Nos. 2 to 23 in gross direct violation of orders of CLB dated 10.11.2006 passed in CP No. 56 of 2002 executed agreement of sale 16.11.2006 and agreement of sale cum GPA on 17.11.2006 in favour of Sh. Tripuramallu Anil Kumar & Sh. N. Siva Prasad illegally transacting the property of the Company. He also submits that the Respondent Nos. 1, 24, 25, 27 and 28 have also filed CA 138 of 2008 seeking certain direction from the CLB with regard to eligibility of votes counted at the EGM. Hence, the learned counsel submits that the impugned agreement of sale and agreement of sale cum GPA to be declared as null and void and to direct the respondent No. 2 to 29 to sell their shares to the Petitioners at a fair value to be determined by the CLB.

6. Sh. V.S. Raju, Learned Counsel for the Respondents by interalia contended that the Company Petition itself is not maintainable as the Petitioner was holding only 10 shares and his contention that he was holding total 34 shares is not correct and denied. In fact, the Learned Addl. Sr. Civil Judge in his Order dated Aug 22, 2007 passed in IA No. 628/07 in OS No. 97/07 has interalia held that the Respondent (Petitioner



herein) was having only 10 valid shares but not 34 shares as contended by Petitioner (Respondent herein). And the same fact was also taken into consideration by the Learned Chairman, while conducting election to the Board of Directors in pursuant to the Order passed in CP No. 56 of 2002.

7. The Learned Counsel further submits that in pursuant to the Extra Ordinary General Meeting held on 30th August, 2008, which is conducted in pursuant to the Order of CLB dated 10.11.2006 passed in CP No. 56 of 2002, Respondent Nos. 2 to 4 and 29 have been declared elected as Directors of the Company. So, a newly constituted Board of Directors is already started functioning under the Chairmanship of Justice Sh. P. Ramakrishnam Raju (Retd. Judge, Hon'ble High Court of Andhra Pradesh). He also submitted that the new Board will look into the aspects of the properties of the Company and distribute the sale proceeds among the members of the Company. Since, the entire issue with respect to the affairs of the company has reached finality by virtue of the Order of the CLB as mentioned above, there cannot be any further direction required as sought by the Petitioner herein. The issue cannot be reopened at the instance of the Petitioner on untenable and frivolous grounds. Therefore, he submits that the present Company petition is infructuous and devoid of any merits in addition to lack of maintainability.

8. In light of above discussion of the case, the following issues arises for the consideration of this Tribunal.

- i. Whether the Company Petition itself is maintainable under Section 397, 398 read with Section 399 of the Companies Act, 1956 as the quantum of shareholding of the Petitioner is in question;
- ii. Whether the Petitioner has come to this Tribunal with clean hands in seeking to set aside the Agreement of Sale and the Agreement of sale cum GPA, since the Petitioner is aware that the affairs of the Company are involved in several legal disputes by filing several cases before several courts;
- iii. If so, what is the relief the Petitioner is entitled for.

9. So far as the first issue is concerned, it is not in dispute that as per Section 399 of the Companies Act, 1956, a petition to be maintained under Section 397, 398, a person has to possess minimum 10 percent of issued and Paid-up share capital of the company. In the instant case, the Petitioner contends that he was holding 34 fully paid up equity shares of the company constituting 15.74% of the Paid up capital of the Company. The Petitioner, in the first instance holds only 10 shares of the Company constituting only 4.62% and the remaining 24 shares which, the Petitioner claims to have purchased and transferred on 27.11.2006, are in dispute. And this dispute was ultimately settled vide Order dated Aug 22, 2007, passed in IA No 628 of 2007 in OS No. 901/07 filed by Vijayawada Share brokers Ltd and another, on the file of I Addl. Senior Civil Judge, Vijayawada. In this Order, after analysing the entire issue of transfer of shares of the Company in question, it is interalia held as follows:



“The shares transferred by L. Nagabhushanam are not valid documents for EGM under Section 169 of the Companies Act. So, all the documents filed by the present petitioner categorically shows that the respondent is having only 10 valid shares but not 34 valid shares as contended by the Respondent.”

It is not in dispute that a Company Petition can be filed u/s 397 and 398 of the Companies Act, 1956 by the members of the Company of not less than 100 members of the Company or not less than one-tenth of the total number of its members, whichever is less or not less than one-tenth of issued share capital of the company provided that the Applicant (s) have paid all calls and other sums due on their shares, in a case where the Company having a share capital.

10. In the instant case, as stated above, the undisputed shareholding by the petitioner is only 10 shares (out of 216 shares) and the remaining 24 shares are disputed shares, for which the competent civil court has already declared that the Petitioner does not possess those shares as per the order passed in said I A No. 628 of 07.

The above fact was also taken into consideration by the Learned chairman, while conducting election to the Board of Directors in pursuant to the direction given by CLB in CP No. 56 of 2002 and held that the Petitioner was holding only 10 shares.

In view of the above, we have no hesitation to hold that the petitioner was holding only 10 shares out of the 216 total shares, which constitutes hardly 4.62%. Hence, this Petition is not all maintainable.



11. The Petitioner even did not mention the details of so called agreement of sale and agreement of sale cum GPA in the prayer of this petition. It is also not in dispute that the Petitioner is aware of all the disputes with regard to the affairs of the Company. The Petitioner himself stated that he was aware of CP No. 56 of 2002 before the Hon'ble CLB, Chennai and, being a shareholder of the Company, he can get impleaded in the said CP, if his interest was going to be affected by virtue of the above litigation and possible orders by CLB. While making allegations that the Respondents have suppressed various material aspects of the Company before the CLB in CP No. 56 of 2002, it is for the Petitioner to take steps to raise those contentions in the very same petition. It is also not in dispute that the Petitioner is also aware of further developments filing WPs after the CP No. 56 of 2002 was finally disposed of and the subsequent CA No. 138 of 2008. It is not in dispute that the CLB after analysing the entire issue and relevant law, was of the view that only issue remains to be adjudicated/resolved with respect to the Company, in order to put an end to the affairs of the company complained of, was to sale the property of the Company and to distribute the proceeds of those sale proceedings amongst the shareholder of the Company. Accordingly, as stated above, the Hon'ble CLB has appointed Hon'ble Retd. Justice P Ramakrishnam Raju to oversee the implementation of the directions passed in CP No. 56 of 2002. The newly constituted Board of the Directors of Company has already taken charge to conduct day-to-day affairs of the company in order to implement the directions of CLB passed in the above case, under the supervision of Learned Chairman. So



the Petitioner cannot raise any dispute with regard to properties of the company and it is for the newly constituted Board to look into all the properties of the Company and to sell those properties at suitable prices and to distribute those sale proceeds among the shareholders of the Company, which includes, of course, the Petitioner herein, who holds 10 shares of the Company.

12. The learned Counsel for the Respondents further submitted an Order dated 6th Aug, 2009 passed in Contempt case no. (CC) 856 of 2007 by the Hon'ble High Court of AP, which was filed by L. Nagabhushanam, one of the shareholders of the Company by praying to punish the P. Surendra Kumar (contemnor/Petitioner No.2) for committing contempt of the Order of Hon'ble CLB dated 8.11.2002 in CP No. 56 of 2002. It is alleged in contempt petition, that the status-quo Order in regard to the properties held by the Company passed vide 8.11.2002 in CLB passed in CP No. 56 of 2002, was violated by the contemnor by executing agreement of sale cum GPA on 17.11.2006. The Hon'ble High Court, after discussing the entire case, dismissed the contempt petition.

13. The above circumstances clearly shows that the Petitioner is bent upon to raise one litigation or the other on frivolous grounds. Even now, the Petitioner is not in a position to accept the decision of CLB passed in CP No. 56 of 2002, which has become final as stated above. The petitioner failed to mention even the date of agreement of sale and agreement of

sale cum GPA in the prayer asked by the Petitioner as stated above. Since, we have already disposed of CA No. 138 of 2008 in CP No. 56 of 2002 by an order dated 06.01.2017, in order to put an end to litigation and to see the orders of CLB passed in CP No. 56 of 2002 be implemented, it is for the Petitioner to approach the newly constituted Board of Directors to assist the Board to carry out the directions of the CLB. In order to put an end and frustrate this type of frivolous litigation and to prevent abuse and misuse of process of law and to uphold the dignity and majesty of the Courts, it is necessary that the Petitioner is to be saddled with costs.

14. In the above facts and circumstances of the case, the Company Petition fails. Accordingly, the Company Petition bearing number 26 of 2009 is dismissed with a cost of Rs. 25,000 (Rs. Twenty five thousand) which is to be paid to "Andhra Pradesh Chief Ministers Relief fund", within a period of three weeks from the date of receipt of copy of the order. The petitioner is directed to cooperate with the newly constituted Board of Directors of company to implement the directions of the CLB dated 10th November, 2006 passed in 56 of 2002. The Registry of NCLT is directed to send a copy of this Order to Government of Andhra Pradesh.

SD/-

RAVIKUMAR DURAISAMY

MEMBER (TECH)

SD/-

RAJESWARA RAO VITTANALA

MEMBER (JUDL)

V. Annapoorna
V. ANNA POORNA