

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

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

C.P No. 69 of 2015

(TP No.82/HDB/2016)

Date of Order: 11.11.2016

Between:

1. Mr. I.V.S. Raju,
502, Srinilaya Estate,
Ameerpet, Hyderabad-500 073,
Telangana.

.... Petitioner

And

1. Aswani Power Projects Private Limited,
502, Srinilaya Estate,
Ameerpet, Hyderabad-500 073,
Telangana.
2. Mr. K. Subba Reddy, Director,
B-102, Ameya Residency,
Madhuranagar, Hyderabad-500 038,
Telangana.
3. Mr. M. Dattu Vara Prasad Rao, Director,
H.No: 31, Survey No.267/1, 267/2,
Luxura Greens, Opp. Kendriya Vidyalaya,
Bowenpally, Secunderabad-500 011,
Telangana.
4. Mr. I. Vijaya Kumar Raju, Director,
26 C, Tower-1, The Belchers,
No.89, Pok Fu Lam Rd,
Pk Fu Lam, Hongkong.



5. Mr. I Srinivasa Vinod Varma,
B-204, Ramky Towers, Gachibowli,
Hyderabad-500 032, Telangana.

... Respondents

Party-in-person

: Shri I.V. S. Raju

Counsel for the Respondents

: Shri B. Dhanaraj

CORAM

Mr. Rajeswara Rao Vittanala, Member (Judicial)

Mr. Ravikumar Duraisamy, Member (Tech)



ORDER

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

1. The Company Petition bearing No. 69 of 2015 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.82/HDB/2016.
2. The Company Petition was filed by Sri I.V.S. Raju under Sections 43, 58 and 59 of the Companies Act 2013, and Sections 397, 398, 399 of the Companies Act, 1956 r/w Regulation 44 of the Company Law Board Regulations, 1991, by inter alia seeking direction "to disqualify the appointment of Respondent Nos. 2 to 5 as Directors of the first respondent company; permit the petitioner to appoint such person(s)



with adequate capability to act as Director(s) of the first respondent company; in the alternative, direct the respondent Nos. 2 and 3 to cooperate with the petitioner for smooth functioning of the respondents company; and direct the respondent not to adversely interfere with the implementation of SIPIT (Upper) Hydro Electric Project, Arunachal Pradesh by the first respondent company etc.

3. The brief facts leading to the filing of the present company are as follows:
 - a) Ashwini Power Projects Private Limited (hereinafter referred to as company) is a private limited company incorporated on 24.02.2010 under the provisions of Companies Act, 1956. The main object of the Company is to carry on the business of generation and distribution of power to thermal, natural, gas and non-conventional energy sources such as hydro, solar, wind, tidal etc.
 - b) The Petitioner is the founder and Managing Director of the Company and, is responsible for the award of SIPIT (Upper) Hydro Electric Project, Arunachal Pradesh to the Company.
 - c) The second respondent herein is associated with the company since its inception. The third respondent joined the company after about six months after incorporation of the company. Both 2nd and 3rd respondents promised that they would invest in the company either by themselves or through the 3rd party funding to the extent of percentage of their respective shareholding in the company. Accordingly, they were allotted 33% and 25% respectively are made Directors of the Company. However, it is alleged, they are not



contributing to the development of the company. Subsequently, they have stopped even visiting the sites in Arunachal Pradesh, as they are busy with their own work in Andhra Pradesh. So the Petitioner took the burden of carrying on business on his shoulders.

- d) On September 17, 2012 the shareholders of the company entered into a memorandum of understanding with one Mr. Murali Krishna & Associates for completion of the said project and, as a consideration for the same, 49% of the shareholding in the company would be allotted to Mr. Murali Krishna by retaining the remaining 51% with the petitioner and 2nd and 3rd respondents. The petitioner would continue as Managing Director.
- e) Subsequently, the 2nd and 3rd respondents had conspired with said Murali Krishna & Associates to get rid of the petitioner as Managing Director for the new arrangement and managed to transfer the said project to another company by name Srikar Sipit Hydro Power Limited, which was incorporated as a special purpose vehicle (SPV) by the 2nd and 3rd respondents by a Board resolution in a meeting held on 08.11.2012.
- f) Since Mr. Murali Krishna & Associates are not making funding as promised, the Respondent Nos.2 &3 requested the petitioner to pass a resolution to revoke the decision of the rights given to SPV. Accordingly, a resolution was passed on February 25, 2013 and, it was signed by the petitioner and respondent 2 and 3. Subsequently, the respondents 2 and 3 along with Mr. Murali Krishna resolved to close the said SPV in the Board of Directors of the Meeting of SPV Company, dated 15.04.2013. Subsequently, the respondents started pressurising the petitioner to sell the project to the third parties. They are not interested to implement the said project. The petitioner held

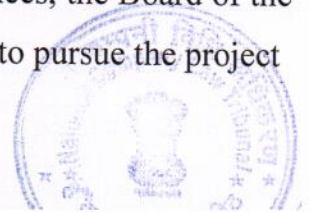
meeting of Board of Directors on 14.06.2013, 24.07.2013 and 28.12.2013 putting an agenda for further investment either from the Director promoters or from potential outsiders for taking ahead the project on hand with the company. However, the respondent No.2 and 3 did not cooperate with the proposed agenda. They are very selfish and ludicrous that with an investment of about Rs. 1.5 crores including that of their family members together, they want to control the company with a project of about Rs. 400 crores value.

- g) The petitioner further alleged that he was pushed into a corner and forced him to sign cheques on wrong bills and make payments to people they nominate by showing works as completed. They have also increased share capital/shareholders/directors to gain better profits from third parties.
- h) They respondent No.2 and 3 created a fake Board Resolution, dated 05.06.2013 and sent a letter to the Chief Engineer (Monitoring), Department of Hydro Power Development (Monitoring), Government of Arunachal Pradesh, by intimating that Ashwini Power Projects Private Limited authorised Sri Deval Rohit Bhai Shah to sign MOA on behalf of Ashwini Project for implementation of 8 MW Nyikgong Hydro Electric Project. They are also pressurising the petitioner to buy their shares subject to the terms and conditions stipulated by them or to identify third party, who would purchase the shares held by them in the company. The respondents are not allowing the petitioner even to pay rents, salaries etc., putting pressure on him to spend money from his personal profits to meet minimum day to day and unavoidable expenses to run the company. He was not allotted any equity shares even though he has invested/advanced a sum of Rs.50 lacs and above towards share



application money in the company and an amount of Rs. 49,78,225/- worth of shares remain to be allotted as on 31.03.2014 as per Account books. After alleging several allegations, he submitted that the respondent no. 2 and 3 are not interested to invest in the company or allowing others to invest by rejecting the proposed Board Meeting and they are bent upon to deprive the petitioner of his legitimate rights. The petitioner stated that he holds that 17.18% equity shareholding in the first respondent company.

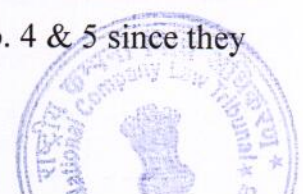
- i) The Respondent Nos.4 & 5 are the sons of the petitioner and also Directors of the Company.
- j) The Respondent No.2 & 3 has filed a common reply dated 15.11.2015 by inter-alia stating that the petitioner has not placed true facts in the petition. They stated that though his two sons are arrayed as respondent No.4 and 5, he has chosen not to make any allegations against them. In fact, both the sons, who are the Directors of the Company, have filed a Civil Suit bearing O.S.No.325 of 2015 before the Principal District Judge, R.R. District against the Petitioner and his wife and Ramky Infrastructure Limited by seeking declaration that the ^{1st} Defendant (the petitioner herein) to refund Rs.1 Crore to the plaintiff with interest, grant permanent injunction etc. So the petitioner has filed the present petition as a counter blast of the said Suit.
- k) There was a PIL bearing No. PIL(AP)2014-337-59 filed before the Hon'ble Gauhati High court, in which the Company is also one of the respondents and the same is pending and, Central Water Commission has advised scrapping of projects in the Siang river basin and, there is every likely hood that SIPIT Hydro project in question might be scrapped. In the circumstances, the Board of the company has taken a commercial decision not to pursue the project



until the outcome of PIL and final on CWC recommendation. And they have further stated that it is only the petitioner but the respondents also contributed to the Company. The Second respondent, who is a a qualified Engineer and a co-founder of the company and a subscriber to the Articles and Memorandum of the Company. The third respondent has also made investments into the company by purchasing shares and his wife also has a stake. Respondent 2 & 3 were allotted shares in the ratio of 33: 25 for their investment and thus were inducted as Directors of the Company.

- 1) So far as the allegations with regard to Mr. Muralikrishna & Associates are concerned, they have stated that it is the petitioner, who has recommended them to the Board of Directors to enter into MOU with Muralikrishna and the MOU was signed by the petitioner. Now the petitioner is making several baseless allegations against MOU and subsequent actions. Due to unreasonable demands of the petitioner, Muralikrishna & Associates themselves quit from the SIPIT project and thus a resolution was passed on 25.02.13 to revoke earlier decision of executing the project through SPV Srikar SIPIT Hydropower Limited.

In order to protect the interests of Company and its members, the Board in its meeting dated 5.6.13 passed resolutions to sign MOU for other small projects for the Company. However, the petitioner is meddling with these efforts also by writing letters to the Concerned Departments by saying that the resolutions are not valid etc. During the Board meeting held on 28.12.2013, the progress of the company was discussed by the Respondents 2 & 3 with the petitioner and it was decided to shift the office, no remuneration to the petitioner, MD, retirement of respondent No. 4 & 5 since they



were not present for the past few months etc. In fact, the petitioner is siphoning off funds of the Company by creating bogus invoices and vouchers etc. On the contrary, he is making false allegations against the respondents. They have further stated that company is not doing any business for the past few years. However, the petitioner is claiming false expenditure from the company funds.

m) They have further stated that it is the sons of the petitioner, who have funded petitioner to get shares in the company. It is false to state that he has invested Rs. 50,00,000/- in the Company as Share capital and in fact there is no requirement for the company to accept any investment from the petitioner. The company was incorporated in the year 2010 and it is in dormant for the past 2 years since 2013 since company does not have any prior experience in power project and cannot compete for bigger projects like SIPIT. It is also stated that the petitioner in eccentric nature and failed to visualize practical solutions for implementing the projects and he was non-cooperative and adamant to the progress of the company.

They have further stated that the petitioner has wasted so much money of the Company in making pleasure trips abroad and staying in costly hotel etc. Even though the petitioner is indulging in anti-company activities, he is being continued as Managing Director by virtue of his age (70 years of old) and also on the ground that he is a one of the promoters of the company. They have further stated that the petitioner failed to make out any ground warranting to wind up the company and thus this Tribunal cannot consider to grant any relief under Section 402 of the Companies Act, 1956. Moreover, the petitioner himself has stated that he is not interested to close the company.



- n) The Respondent No.4 and 5, who are the sons of the petitioner, have filed a separate counter dated 15.11.2015 by inter-alia contending that they have filed a civil suit in O.S.No.325/2015 on the file of Principle District Judge, R.R. District against the petitioner seeking injunction and recovery of money as the petitioner had misused and misappropriated several crores of rupees from them. They have also stated that the petitioner suppressed the information about the PIL even though the Company is a party to it.

They have further stated that the shares of the petitioner in the company are in fact, the shares purchased with their funds. So they alleged that the shares of petitioner in the Company, are in fact, belongs to them. They stated that the petitioners' claims regarding rents, salaries etc are false and bogus claim and he is not entitled for the same. The petitioner does not have any independent source of income and he is depending on them to meet his expenses. They have also alleged that the petitioner sticking to the post of Managing Director continuously without paving way for the other Board members and spending the money of the company in a lavish way. The fact remains that no single project was undertaken under his leadership, even though he spent lots of money for the alleged projects. The petitioner, being a senior citizen having crossed 70 years is being continued as Managing Director. The office premises, which he claims paying rent, in fact belongs to the Respondent No.4 and drawing the money for payment of rent also. They further alleged that the petitioner is highly impractical and disillusion and pressuring all the board members time and again to invest more and also allot more shares. They have also denied all the allegations



made by the petitioner against the respondent No. 2 & 3. Therefore, they prayed the Tribunal to dismiss the petition summarily.

- o) The petitioner has filed written arguments dated 07.09.2016 by denying all the averments made by the respondents No.2 to 5 in their replies and reiterated the averments made in the petition. He submitted that the dispute with regard to his sons are completely academic in family system in respect of marriages and properties and have no bearing on the present case whatsoever. He further stated that the respondents No.4 and 5 were taken in the Board of the company solely at his will to increase the Board's technical and academic profile of his sons. Because of the acts of the respondents No.2 and 3 in their non-cooperation in running the business of the company, the company affairs came to a grinding halt. He further alleged that in not allotting shares to him and stopping the projects on hand from moving forward is nothing but oppressive acts of the respondents and, it is detrimental to the interest of the petitioner. He further submit that the reason for filing the present petition was not to get any illegal gains but only to see some how the projects started keeps going on as it was his brain child. So he submits that the Tribunal may allow the petitioner to run the company or take over on by the respondents, who are in the majority. If further investments are not made to the Company, it would result in winding up of the Company, which is not acceptable to the petitioner. By holding the Company in animated suspension is against law and company regulations and, it would adversely affect the interest of the other investors, especially the petitioner, who is the founder of the





Company. He thus made the Tribunal to allow the petition as prayed for in order to put an end to the acts of oppression and mismanagement on the part of the respondents.

He further relied upon judgement of the Apex Court viz. *M.S.D.C. Radharamanan Vs. M.S.D. Chadrasedkara Raja and others* (Civil Appeal No. 2006 of 2008).

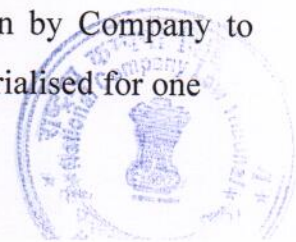
4. Heard Shri I.V.S. Raju (party in person) and Shri B. Dhanaraj, learned Counsel for the respondents and, have carefully perused all the pleadings made in the company petition and replies filed by the respondents along with material papers filed in their support.
5. Shri I.V.S. Raju, party in person, has reiterated all the contentions raised in the petition and has also filed written arguments as mentioned above. He has submitted that the oppressive acts of the respondents still being continued by the respondents and he is being ignored totally in the affairs of the Company.
6. Shri B. Dhanaraj, learned Counsel for the respondents, while reiterating the averments made in his reply, has further stated that the applicant does not come to the Tribunal with clean hands, in which he has suppressed several material facts to the issue. He submitted though the company was incorporated in the year 2010 and it is in dormant since 2013 in view of the unworkable plans hatched by the petitioner and, failure on the part of the petitioner to cooperative with the other Directors of the company in running the business.

He further submitted that he has suppressed about the PIL filed before the Hon'ble Gauhati High Court, in which the Company was arrayed as one of the respondents, in which SIPIT Hydro Project is

one of the parties therein. Central Water Commission also has advised the Government to scrap the project in Sian river basin. The competent Board of the company has taken a commercial decision as not to pursue the said SIPIT project till the issue is settled and desires to pursue smaller projects so as to see the company runs at least to the minimum. However, the petitioner with his stubbornness attitude is not at all cooperating and the petitioner is sabotaging all the efforts of the Board members in getting small projects. He further submit that he is instrumental in entering into MOU with Muralikrishna & Associates, and also contributed for failure of that MOU by virtue of his un-compromising attitude. Accordingly, Board resolution was made on 25.02.2013 to revoke the earlier decision to execute the SIPIT project through SPV SRIKAR SIPIT Hydro Power. For all the major decisions taken by the company, the petitioner was well aware and associated too but now making several baseless allegations even against Muralikrishna & Associates.

The Learned counsel further submits that respondents No.2 and 3 have contributed so much for the growth of the company by investing huge money and the 2nd respondent is a qualified engineer and one of the promotor directors. He further submits that the petitioner is not entitled for any allotment of shares and the alleged payment of Rs.50,00,000 for allotment of shares is bogus. He has explained the details of lavish expenditure made by the petitioner from the company's funds for nothing.

7. It is not in dispute that the company is hardly taking up any activities after SIPIT project was in dispute and, the decision by Company to undertake the smaller projects also could not be materialised for one

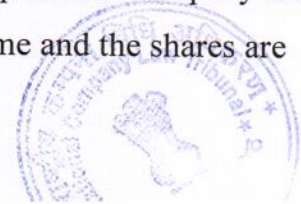


reasons or other and the petitioner also coming in the way by writing controversial letters to the Authorities. The petitioner himself has submitted that it is not his case that the company, which is a brain child, should windup. On the other hand, he submits that the company should run either under his control or with the control of the respondents. It is relevant to point out here that the respondents No.4 and 5, who are the sons of the Petitioner, have also not supported the contentions and allegations made by the petitioner made against the Respondents No.2 and 3. They have also stated that the petitioner does have any financial resources and even for his maintenance and other things they are contributing to their father. They have also stated that they themselves have funded their father (Petitioner) to purchase shares of the company and, those shares are in fact, belong to them and he holding them in trust for them. They further stated that they also filed a Suit as mentioned above; the issue in the suit have a bearing on the present case.

8. The petitioner did not submit any material evidence so far as the allegations of oppression and mismanagement except exchanging letter between him and the respondents.

With regards to the averments of the Respondents that the Petitioner is misusing the funds of the Company for his luxurious life like going in flights, staying AC rooms etc, the same is internal day-to-day affairs of the Company. The Respondents being the Directors of the Company, in case of any dispute or excess claims, the same should be settled as per the Company's internal policy/rules, etc, therefore, we refrain from commenting on the averments.

The Petitioner has claimed to have invested an amount of Rs. 49,78,225/- towards share application money of the first Respondent Company and submitted a ledger statement in support of the same and the shares are



yet to be allotted. Though the Respondents claim that R.4 and R.5 are the sons of the Petitioner who have funded Petitioner towards share application money, we would like to add that it is immaterial towards the source of funds from where the money has come to the Petitioner (from the sons). However, the Petitioner has paid towards share application money of the Respondent No.1 Company and therefore, he is legally/rightfully entitled to get shares equivalent to share application money invested in Respondent No.1 Company.

9. The Hon'ble Supreme court in the cited case ie MSDC Radharamanan, it is interalia held that the Company Law Board can pass any other order or further orders in the interest of Company, if it is of the opinion, that the same would protect the interest of company. In a case filed under Sections 397/398, firstly, the petitioner has to make out a case of winding up in the first instance, then he should also make out a case, that such wind up would adversely affect the interests of the company/public interest and the petitioner. In the instant case admittedly, it is not the case of the petitioner that he wants the company to windup. On the other hand he wants the company to run by himself or by the respondents at the helm of affairs.

When the petitioner failed to make out a case under Section 397/398 and, in fact not pleaded at all that winding up is just and equitable, the Tribunal cannot exercise jurisdiction under Section 402 of the Companies Act, 1956. We cannot adjudicate whether a particular project is viable for the Company. However, the Board of Directors of the Company are better judges to take appropriate decisions basing on the circumstances prevailing, business viability, profitability, capability, etc at any given time. Hence, we refrain from making any observation on SIPIT Hydro Project.



10. In the instant case, the petitioner is stated to be above 70 years of age and, sons of the petitioners, who are respondents No.4 and 5, are already in the company. In the present case, the respondents have categorically stated that they don't want to remove the petitioner from the post of Managing Director, out of their respect for the founder member of the Company and being senior citizen. In view of the above circumstances, the CP is disposed of by following directions:

- a. We direct the Respondent No.1 Company to allot the shares equivalent to share application money received from the Petitioner and also from others, if any, who have invested in the Respondent No.1 Company within 3 weeks from the date of the Order in accordance with the applicable provisions of the Companies Act.
- b. Direct the respondents to continue the petitioner as Managing Director in accordance with the applicable provisions of the Companies Act.
- c. We direct the respondents to involve the petitioner in the affairs of the Company and utilise his experience for the better management of the Company affairs.
- d. Instead of raising frivolous issues, we also hereby direct the Petitioner to co-operate with the respondents in smooth functioning of the affairs of the Company.

No order as to costs.

Sd/-

Sd/-

RAVIKUMAR DURASAMY
Member(T)

RAJESWARA RAO VITTANALA
Member (J)

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OF THE ORIGINAL



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