

IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, AT HYDERABAD.

C.P. No.49 of 2012

(TP No.64/HDB/2016)

**In the matter of:**

1. Mr. P. Prasanth Kumar,  
S/o Mr. Pitchi Reddy,  
64, 2<sup>nd</sup> Floor,  
C.P. Ramaswamy Road,  
Alwarpet,  
Chennai – 18

Petitioner

**Versus**

1. M/s Baystar Marine Private Limited,  
Flat No.101, Sita Residency,  
Seethammadhara,  
Vishakapatnam,  
Andhra Pradesh – 530 013.
2. Mr. T. Janardhana Reddy,  
S/o Mr. Venugopal Reddy,  
50-117-17/9, Hill View Layout,  
Seethammadhara North Extn.  
Vishakapatnam,  
Andhra Pradesh – 530 013.
3. Mr. B. Trinadha Babu,  
S/o Mr. Bulli Raju,  
9-20-2, CBM Compound,  
Vishakapatnam,  
Andhra Pradesh – 530 013.
4. Ms T. Supraja,  
W/o Mr. Janardhan Reddy,  
50-117-17/9,  
Hill View Layout,  
Seethammadhara North Extn,  
Vishakapatnam,  
Andhra Pradesh – 530 013.
5. Puravie Marine (P) Ltd.,  
Door No.55-43-34,  
Doctor's Colony,  
Seethammadhara,  
Vishakapatnam,  
Andhra Pradesh – 530 013.

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**Respondents.**

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**Judgement Delivered on: 14. 07.2017.**

**CORAM:**

Hon'ble Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)

Hon'ble Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)

**Counels Present:**

Counsel for the Petitioner: : Sri G. Vamshi Krishna

Counsel for the Respondent No.3 : Sri Bhupesh.

**Per. Ravikumar Duraisamy, Member (Technical)**

**JUDGEMENT**

1. The Company Petition was initially filed before the Hon'ble Company Law Board (CLB), Chennai Bench, Chennai. Since the National Company Law Tribunal (NCLT), Hyderabad Bench, has been constituted for the cases pertaining to the states of Andhra Pradesh and Telangana, the case is transferred to the Hyderabad Bench of NCLT, and we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.
2. The present Company Petition has been filed by Mr. Prashanth Kumar, under Sections 111A, 397, 398 Read with Sections 402 and 403 of the Companies Act, 1956, seeking following reliefs:
  - a) to rectify the register deleting the name of the 4<sup>th</sup> Respondent as shareholder in respect of 40,000 shares and substitute the name of the Petitioner in her place;



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- b) to declare annual returns for the year ending 2004-05 reflecting the alleged transfer of shares from Petitioner to 4<sup>th</sup> Respondent as null and void.
- c) to declare the purported annual return for the year ending 2005-2006 showing the Petitioner has ceased to be Director as null and void;
- d) to declare the Form 32 filed by the 2<sup>nd</sup> Respondent purporting to record appointment of 4<sup>th</sup> Respondent as Director as invalid and non-est in law;
- e) to declare that no valid shareholders meetings and Board Meetings were convened or conducted by the Company since 2004;
- f) to appoint a Chartered Accountant to value the Company and surcharge the 2<sup>nd</sup> and 4<sup>th</sup> Respondent for losses caused, as ascertained by the Chartered Accountant and;
- g) To reconstitute the Board of Directors in such manner as the Hon'ble Bench may deem fit etc.



3. The brief facts of the case is that; the 1<sup>st</sup> Respondent Company was incorporated on 06.09.2002 vide CIN No.U05005AP2002 PTC39613 with Registration No.39613.
4. The Authorised Capital of the Company is Rs.10, 00,000/- (Rupees Ten Lakhs only) divided into 1, 00,000 (One Lakh) equity shares of Rs.10/- each
5. The Petitioner submits that there is a vacant land admeasuring 3 acres at Palamanpeta Village, Payakaraopet Mandal in Godavari District in the name of the Company and the Petitioner was looking after the managerial affairs and was authorised to

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operate the company and Bank account. The 2<sup>nd</sup> Respondent has taken an undue advantage letting out the hatchery of the Company on lease to third parties on an informal basis without Board approval and against the Memorandum of Articles of Association of the Company and breach of his fiduciary duty to the Company and its members. The 2<sup>nd</sup> Respondent has retained original share certificate and the Annual Returns purportedly filed for the year 2004-05 reflected alleged Transfer of shares from the Petitioner to 4<sup>th</sup> Respondent i.e., the wife of the 2<sup>nd</sup> Respondent. The Petitioner further states that he continues to hold 40,000 shares. He also stated that the 2<sup>nd</sup> Respondent failed to file returns on behalf of the company right from the year 2006. It is stated that the acts of 2<sup>nd</sup> Respondent amounts to oppression and mismanagement under sections 397 & 398 of the Companies Act 1956. The Petitioner became a shareholder on the basis of trust and confidence in the 2<sup>nd</sup> respondent who is his cousin brother. The 2<sup>nd</sup> Respondent has betrayed the trust reposed in him and has ousted the Petitioner and 3<sup>rd</sup> Respondent as Directors and fabricated the records to show as if the Petitioner has even ceased to be a shareholder.



6. The Petitioner finally stated that he came to know that the 2<sup>nd</sup> respondent is trying to alienate the property and requested to curb his activity and reflect his name as Director of the Company.

7. Vide Interim Order of Company Law Board dated 27.04.2012 Respondents were restrained from alienating or dealing with immovable property till 20.06.2012. The above interim order was extended till further orders on 20.06.2012. Subsequent to transfer of the case to NCLT, also issued notices to the Petitioner and Five Respondents on 22.08.2016. Notices sent to all the Respondents were returned undelivered with various remarks such as addressee not known; door locked; no such addressee; The case was also Listed on 04.10.2016, 19.10.2016, 20.10.2016, 15.11.2016, 25.11.2016.
8. Petitioner holds 40,000 shares of Respondent No.1 Company amounting to 40% of shares. Respondents 2 and 3 hold 30,000 shares amounting to 30% each of paid up capital of R.1 Company and all the three were original subscribers to Memorandum of Association and the first directors. Respondent No.2 is the cousin of the petitioner. The Petitioner claims that his entire shares of 40,000 were illegally transferred to R.4.
9. However R4 has vehemently opposed the allegation of petitioner. Perusal of the Documents reveal that petitioner had sold his entire shares to R.4 on 18.01.2013 and the Petitioner also submitted both share certificates and transfer deeds. R.4 also issued a cheque for Rs.4 lakhs for purchase of 40,000 shares which was also encashed by the Petitioner. The Respondent also submitted Bank pass book evidencing the payment made to the petitioner.



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10. Upon perusal of the share certificate, transfer deed, the signature of the petitioner is also matching with signatures made by him on various documents such as Affidavit, petition copy, share transfer forms, Board minutes, balance sheet etc. Therefore the signature of the petitioner in the transfer deed can be safely concluded to be the signature of the petitioner based on the naked eye view.
11. The petitioner was also the Managing Director of R.1 Company and R.2 was Executive Director and R.3 was Chairman of R.1 Company. The Respondents also state that the Annual Returns for the year 2005 filed with RoC show the changes in the share holding pattern but the petitioner filed the C.P. only in the year 2012 i.e., after a gap of seven years which suffers from laches under Limitation Act, 1963 not maintainable and also sought to be dismissed in limine. Respondents also claimed that petitioner has not exercised rights as a shareholder or director and individual in question.
12. Respondents also submitted that since the petitioner's shares were already transferred to R.4 in the year 2005 itself, he is no longer a shareholder of R.1 Company. Therefore, the petition is not maintainable under Section 397/398 as he did not satisfy section 399 of the Companies Act, 1956.
13. R.4 has adopted the reply filed by the R.1 and R.2 by a counter dated 12.01.2013.



14. Considering the entire facts, circumstances and the records made available there is sufficient proof of evidence that the petitioner's shares were transferred to R.4 in the month of January, 2005 itself and the same was duly approved in the Board Meeting held on 18.01.2005. Further, R.4 has also submitted evidence towards payment in the form of Bank statement for having paid Rs.4 lakhs to the petitioner. Further, we are also of prima facie view that the petitioner's signatures matches with other documents submitted such as petition, affidavit, share transfer forms, board minutes etc., as stated supra. Therefore petitioner's prayer to rectify the register deleting the name of the 4<sup>th</sup> respondent as shareholder in respect of 40,000 shares and substitute the name of the petitioner and declare annual return for the year ending 2004-05 as null and void does not have any merit and therefore dismissed.

15. The records also show that the petitioner himself has resigned from the Board of Respondent No.1 Company vide letter dated 13.12.2004 and the same was duly approved by the Board of Directors and necessary reports/forms in this regard has also been filed with RoC. Therefore prayer to declare the purported annual return for the year ending 2005-06 showing the petitioner ceased to be as Director is null and void and to declare the Form-32 filed by the 2<sup>nd</sup> respondent as invalid and non-est in-law also rejected.



16. In view of the above observations, findings, other reliefs sought by the petitioner, cannot be considered, since the petitioner himself is not a shareholder at the time of filing the C.P. on 27.04.2012 and he does not satisfy section 399 of the Companies Act, 1956. The entire events show that it is a baseless, frivolous petition filed. Therefore, the C.P. No.49 of 2012 is dismissed.



17. No Order as to costs.

*Sd/-*  
RAVIKUMAR DURAISAMY  
MEMBER (TECHNICAL)

*Sd/-*  
RAJESWARA RAO VITTANALA  
MEMBER (JUDICIAL)

*Order received by the  
Registry on 2/8/2017*

*प्रमाणित प्रति*

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केस संख्या

CASE NUMBER *C.P. NO. 49 of 2012*

निर्णय का तारीख *(TP No. 64/ADIS/20*

DATE OF JUDGEMENT *14-7-2017*

प्रति तैयार किया गया तारीख

COPY MADE READY ON *2-8-2017*

*V. Annapoorna*  
V. ANNAPOORNA  
Asst. DIRECTOR  
NCLT, HYDERABAD.

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