

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

CP No. 13 of 2013

(TP No. 97/HDB/2016)

Date of order: 14.03.2017

Between

Mrs. Mallina Bharathi Rao,
House No.A-1, 19-1-317,
SBI Bank Colony,
Peddapuram-533437,
Andhra Pradesh.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

..... Petitioner



AND

1. Gowthami Solvent Oils Limited
PB No. 7. Pydparu, Tanuku
West Godavri District, 534 211
Andhra Pradesh
2. Mr.M. Ramachandra Rao
Managing Director of the 1st Respondent Company
D.No.23-15-23, Indira Nilayam, Sajjapruam, Park Road
Tanuku, West Godavari District – 534211,
Andhra Pradesh
3. Mr. B. Srimannarayana
Joint Managing Director of the Company
D.No. 23-7-6, Sajjapuram,
Tanuku, West Godavari District
Andhra Pradesh

.....Respondents

Counsel for the Petitioners:

Ms. Mamta Choudary

Ms. Kaveri Shrivastava

Counsel for the Respondents No. 1 and 3:

Mr. C.V.Narasimham

Mr. D.V.A.S. Prasad

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 C.P. No. 13 of 2013(hereinafter referred to as Company Petition) was filed by Mrs. Mallina Bharathi Rao, (hereinafter referred as Petitioner) before the then Hon'ble Company Law Board, Chennai Bench, Chennai (CLB) and the same was initially taken up for hearing on 04.03.2013. The case was pending when the constitution of National Company Law Tribunal (NCLT) was notified by the Government of India. Accordingly, the case is transferred to this Bench in July, 2016 as the case relates to the states of Andhra Pradesh and Telangana. Hence, we have taken the case on record of this Bench. The case was initially taken up for hearing by this Bench on 29.07.2015 and subsequently posted it on 19.08.16,09.09.16,19.09.16, 07.10.2016 25.10.2016, 15.11.2016, 29.11.2016, and finally on 15.12.2016. The case stands adjourned due the requests made by one counsel or the other. Ultimately, it was argued and subsequently filed their written arguments later on.

2. The Company Petition was filed under section 111A, 397 & 398, 402, 405 & other provisions of the Companies Act, 1956 by inter-alia seeking directions as follows :

(a) Direct the Respondents to, either allot or transfer, such number of shares so as to entitle the Petitioner to maintain her percentage shareholding at 2.12% (which was percentage shareholding she held at the time of deletion of her name as a shareholder of the company illegally in the year 1999), upon the receipt of the amount of Rs.13,65,000/- from the petitioner, being the consideration payable in respect of said shares as per the terms of the respective rights issues made by the company in the years 1991-92, 95-96 and 2004-05;

(b) Direct the Respondents to pay the Petitioner all dividends that would have accrued in respect of shares, that forms subject matter of the rights issues during the period 1991-92,95-96 and 2004-05 till date, to which the Petitioner would be entitled had the Petitioner been offered the rights issue in accordance with law and had her name not been deleted from the Register of members in the year 1999, together with interest for such dividends at the rate of 12% compounded annually from the date of payment of the dividend to the other shareholders till the date of effecting actual payment to the Petitioner;

(c) Surcharge the Respondents 2 & 3 for the loss caused to the Company on account of the acts of mismanagement and siphoning off funds, acts of oppression perpetrated by Respondent 2 & 3 from 1999 onwards till date, as will be evidenced from the report of an independent auditor who may be appointed by the Hon'ble Bench to



investigate into the affairs of the Company from 1999 till date and submit the report thereon before this Hon'ble Bench;

(d) To direct the Respondents to pay the cost of the present proceedings to the Petitioner including expenses incurred for obtaining Central Government permission u/s 399(4);

(e) To direct Respondents 2 & 3 to reimburse the Company, amounts to the extent of the entire expenditure of the Company in relation to the proceedings connected with CP No. 7 of 2000 and all further appeals up to Hon'ble Supreme Court in connection therewith and the costs due to the acts of misconduct of Respondents 2 & 3; etc.



3. The brief facts as set out in the Company Petition are follows:-

(a) Gowthami Solvent Oils Limited (herein after referred to as Company) was incorporated under the provisions of the Companies Act, 1956 as a Private Limited Company with Registration No.1699 of 1973-74 on 22nd day of March, 1974. The Company became a Public Limited Company on 28.08.2009. The Authorised Share Capital of the Company is Rs.4,00,00,000/- (Rupees Four Crores Only) consisting of 3,98,000 (Three Lakhs Ninety Eight Thousand) equity shares of Rs.100/- each and 2,000 (Two Thousand) preference shares of Rs.100/- each and the subscribed and paid up capital is Rs.2,64,00,000/- (Rupees Two Crores Sixty Four Lakhs Only) consisting of 2,64,000 (Two Lakhs Sixty Four Thousand Only) of equity shares of Rs.100/-.

(b) The Petitioner subscribed for 350 (Three hundred fifty) equity shares of Rs. 100/- each during 1974 by paying a total amount of Rs.

35,000/- and got allotted same vide share certificate No. 2 dated 28.12.74 with distinctive numbers from 501 to 850. The total shareholding in the Company is 2.120% during 1974-91: 1992-95 1.060% from 1996 onwards 0.265%. The address noted for the above certificates is at Undrajavaram. However, the address of the Petitioner was changed from Undrajavaram to Nandamuru in Krishna District, then to Machlipatnam in Krishna District; and then to Tanuku in West Godavari District, and again to Hyderabad and finally to Peddapuram in East Godavari District where she is presently residing. The Petitioner has changed the above residences due to her husband's nature of job. All the changes of addresses were duly intimated.



(c) The Company is under the control of two groups of shareholders, and almost the entire share capital of the Company is between them. The first group comprises of Chairman Sh. B. Subba Rao and his two brothers Sh. Srimannarayana, Joint Managing Director, and Sh. BVSN Prasad, Director, and their family members. This group hold almost 57% of the share capital. The other group comprises of Sh. M. Ramachandra Rao, Managing Director (MD),(Respondent No. 2) Sh. M. Venkat Rayudu, Whole Time Director (WTD) (who is son of MD) and their respective family members. This group hold around 38% of the Share capital in the Company. During the company's first year of operation Sh. M. Ramachandra Rao (Respondent No.2) was the only shareholder from his family, and no other members of his family were either members or directors in the Company, and his shareholding then was Rs.55,000/- (Rupees fifty five thousand) out of total share capital of Rs.16,50,000/-

(Rupees Sixteen Lakhs Fifty Thousand)i.e initially he held an aggregate of only 3.33% of shareholding in the company. Later on, his entire family and group shareholding was increased to around 38% of the total paid up share capital of the Company.

(d) The 2nd Respondent (MD) is also the father-in-law of the 3rd Respondent, who is a Joint Managing Director of the Company. These two controlling groups have been acting in collusion with each other in perpetuating the management and control over the Company, and are slowly ousting all the minority shareholders including the petitioner by illegal means.

(e) The husband of the Petitioner Sh. Narasimha Rao, is also related to the 2nd Respondent being his elder brother's son. The Petitioner subscribed the shares of the Company in the year 1974 at the behest of the 2nd Respondent, and she has contributed to the Company at the initial stage.

(f) During 1974, the shareholding percentage of the Petitioner was 2.12% and thereafter it came down to around 0.625% out of the total share capital of Rs.1.32 Crores. The Petitioner's shareholding was reduced due to the oppressive acts of the Respondent No.2 in not offering rights issue in the year 1991-92. The Petitioner handed over an amount of Rs.35,000/- (Rupees Thirty five thousand) to the 2nd Respondent through her husband, which was duly acknowledged by the 2nd Respondent for the said offer. However, the 2nd Respondent returned the said money to the Petitioner on the false ground that the Company had withdrawn the rights issues all together. When it was enquired with the



2nd Respondent about the return of the money, the 2nd Respondent assured the husband of the Petitioner that he would inform the Petitioner as and when the Company would come up with rights issue in future. Later, the Petitioner came to know, through other source, that the Company had not withdrawn the rights issue as stated by the 2nd Respondent, and on the contrary, those shares were subscribed by the 2nd Respondent himself behind her back. In the meanwhile, the Petitioner has shifted her address to Machalipatnam from Nandamuru and the change of address was duly informed to the Company and she used to take correspondence from the Company as well.



(g) The Petitioner again came to know through the Annual Report received by her with Hyderabad address by post that another rights issue was issued in the year 1995 without notice to her. When the Company did not furnish any satisfactory explanation about its illegal issue of right shares, the Petitioner then has filed a Petition in Andhra Pradesh State Consumer Dispute Redressal Commission, vide OP No.76 of 1997 with respect to her last opportunities to participate in the right issues for the years 1991-92 and 1995-96. However, the State Consumer Forum dismissed her complaint for lack of jurisdiction on 29.11.1999 and only CLB is having jurisdiction over the issue. However, mischievously, the Company rectified its register of Members of a Company by deleting her name as a shareholder and sent her draft for Rs.2,33,332/- (Rupees Two Lakhs Thirty Three Thousand Three Hundred and Thirty Two) towards return of capital, pursuant to a resolution stated to have been passed on 30.11.1999.

(h) The Petitioner then had filed CP No. 7 of 2000 before Company Law Board, under section 111 of Companies Act, 1956 challenging the deletion of her name from the Register of Members of the Company. Since the very existence of petitioner was ousted from the Company, that the petitioner was filed only for deletion of her name by reserving her right to agitate her for rights shares vide para No. 12 of the above Company Petition. The CLB, ultimately, allowed the said CP No. 7 of 2000 on 20.09.2000 with a cost of Rs.2,500/- (Rupees two thousand five hundred) by directing the Company to restore the Applicants name in the Register of Members of the Company, within 30 days.



(i) Aggrieved by the said order, the Respondents filed an appeal before the Hon'ble High Court of AP and also the Hon'ble Supreme Court. However, the order of the CLB was finally confirmed by the Hon'ble Supreme Court. The Petitioner was illegally removed from the Register of Shareholders of the Company for a period of twelve years from the year 1999. As the Petitioner was not a member, she could not make any complaint against illegally depriving of her rights issue prior to 1999 i.e. 1st rights issue in the year 1991-92 and 2nd rights issue in the year 1995-96. It is also stated that the Company filed an affidavit in CMP No.10988 of 2001 in LPA 207/2001 by undertaking that any bonus or right shares in respect of her 350 shares can be provisionally allotted to 2nd Respondent during the pendency of appeal and same would not be alienated, in order to safeguard the interest of the Petitioner, they would be allotted as per the final result of the case.

(j) In pursuance to the direction of the CLB, ultimately, the membership of the Petitioner was restored to the extent of 350 shares, and paid dividend of Rs.1,21,750 for the period during 2000-11, and interest was also paid @ 12% compounding annually. The Company has also paid the penalty of Rs.2500/- as directed by the CLB. The Petitioner has also sought various AGM notices for the period 2000-2011 and also reminded them about the Petitioners rights/bonus issues entitlement after 2001. The Petitioner vide letter dated 20.11.2011 demanded for three rights issues by enclosing a demand draft dated 19.11.2011 for Rs.13,65,000/-. However the same was illegally rejected on the ground that the Company's General Manager has retired from the service long time back.



(k) The Petitioner claimed for all three rights issues immediately after restoring her as a shareholder in December, 2011 in accordance with the directions of CLB.

(l) The Petitioner contented that she was deprived all her rights as shareholder during the period of litigation. It is also stated that Petitioner, vide letter dated 08.12.2011 has sought for transfer of shares to her name from the second Respondent to whom the rights shares were provisionally allotted during the pendency of appeal before the Hon'ble High Court. The Company has also returned a cheque for Rs.1,40,000/- towards 1:1 rights issues of 2004-2005 at a premium of Rs.300 per share for 350 shares.

(m) The Petitioner has got the permission of the Central Government to file an application under section 397/398 before CLB vide proceedings dated 19.11.2012.

(n) The Petitioner contents that removing her name from the Registrar of Companies and forcing her to approach different Courts is not only pre-judicial and oppressive to her interest as a shareholder of the Company. The Respondents have enhanced their shareholding by depriving the rights issue to the Petitioner. The conduct of the Respondent No. 2 & 3 is clearly oppressive and they have committed gross acts of mismanagement. The management have conducted one emergency Board of Directors Meeting just one hour prior to the Scheduled Annual General Meeting for taking a decision of not allowing her husband to participate in the AGM's meeting as a proxy.

(o) In the above circumstance, the Petitioners claim that there are ample grounds exists for winding up the Company, but it would prejudicially effect the Petitioner's interest as a shareholder and the Company itself, and thus prayed the Tribunal to render justice by suitable orders.

4. All the Respondents have filed a common counter dated 23rd November, 2013 by inter-alia contending as follows:-

(a) They have denied all the allegations in the petition save as expressly admitted in the counter. The present petition is vexatious and it is complete abuse of process of law and wanted to revive waived rights of petitioner with regard to rights shares. The Petition is also barred by



latches and limitations and she cannot claim the rights issue, issued for the years 1991-1992, 1995-96 and 2004-05.

(b) They denied the allegation that there was any collusion to oust minority shareholders of the Company including petitioner. The allegations with regard to the rights issue during the year 1991-92 are false and unsustainable. The issue of removal of petitioner was already settled in the previous petition filed by petitioner (CP No. 7 of 2000.)

(c) They have denied that the Petitioner has ever paid any amount to the 2nd Respondent. The Petitioner failed to subscribe to the rights shares. The offer letter issued for the rights. They have also denied that the petitioner has informed the Company about the change of her addresses. The Petitioner has deliberately approached the wrong forum instead of CLB and she did not approach the CLB even after dismissal of O.P No. 26 of 1997 on 29.11.1999. In the meanwhile, the name of the Petitioner was removed from the Register of Members during EGM held on 30.11.1999 as she was dragging the Company into frivolous and vexatious proceedings at the instance of her husband. The Petitioner also filed a civil suit at Tanuku in which the petitioner did not raise any objections or claim or even whisper about rights issue during the year 1991-92 and 1995-96. In the subsequent CP 07/2000 also, she has not sought any prayer with regard to the rights issue and only sought a direction to rectify of Register of Shareholders of Company and damages. However, she has mentioned about reserving her right regarding rights issue in the earlier Company Petition on the presumption that it would enable her to open up the unsustainable claim.



(d) It is further stated that undertaking regarding bonus or rights shares in respect of 350 shares as mentioned in paragraph 6 & 7 of the Counter Affidavit filed by the 2nd Respondent in CMP No.10988 of 2001 in LPA No. 207/2001 was filed only subject to the final order of the Hon'ble High Court in the said appeal. Since no order was passed by the Hon'ble High court with regard to those issues, it would have no effect. However, they admit that they have paid dividends/interest to the petitioner even though no order was passed by the Hon'ble High court.

(e) While contending that the petitioner has waived the rights with regard to 1991-92 and 1995-96 rights issues, the Respondents contended that the petitioner has not claimed for the rights issue of the year 2004-05 and there was no bar for her to raise this dispute before the CLB earlier. The Petitioner who had slept over their rights who has attempting to set at not by virtue of present Company petition. Without subscribing for rights issue, she cannot claim maintenance of percentage as a matter of right.

(f) The Petitioner miserably failed to specifically set out specific instances of details of oppression and mismanagement and the petitioner is on fishing expedition.

5. We have heard Ms. Mamta Choudary along with Ms. Kaveri Shrivastava, the Learned Counsel for the Petitioners and Mr. C.V.Narasimham along with Mr. DVAS Ravi Prasad, the Learned Counsel for the Respondents.



And we have carefully perused all the material filed in support of their respective contentions.

6. The Learned Counsel for the Petitioner while reiterating the averments made in the Company petition with relevant material filed in its support, has further filed a written submissions dated 15th December, 2016 by inter alia contending as follows:



a) The Petitioner has been continuously suffering oppression and mismanagement at the hands of respondents. She has reiterated that denial of participation in all three rights issues as mentioned above and interpreting the undertaking given in the affidavit filed before the High court in negative. The Respondents have illegally refused to receive the consideration of Rs.13,65,000 paid for issue 3 Rights issues in question. The Respondents have illegally removed her name from the Register of Members and CLB, on considering the issue in detail, has directed the Company to restore the shares of Petitioner. On restoration of shares to the Petitioner, it would be natural that all consequential benefits like dividend, bonus, rights issue etc. are to be extended by the Company itself.

b) There are no laches and limitation attracted in the case. The petitioner has been fighting for her right to participate in rights issue from 1997. As stated supra, the petitioner has earlier filed OP NO. 26 of 1976 and also filed original application to Central Government under section 399(4) on 21.2.1997; filed CP No. 7 of 2000; reserved her rights to agitate rights issue separately; again the petitioner applied on 1.11.2011

seeking permission from Central Govt. to agitate the present issue and the same was granted and thus filed the present petitioner. So there is no limitation involved and it is a continuous cause of action.

c) The petitioner also addressed a letter dated. 06.12.1997 to M.Ramachandra Rao, the second Respondent by explaining all the issues in detail with regard to rights issue in question and requested to furnish the documents as asked in order to know the affairs of Company but to no avail.

d) During 1974-88, many of original shareholders have transferred their shares. However, those shares of outgoing shareholders of the Company were unilaterally purchased by the existing Directors of the Company excluding the petitioner, which is contrary of clause 10 of Articles of Association. And this is also oppressive act on the part of the respondents. The petitioner relied upon the judgements rendered in Akba Ali Kavalert Vs Konkan Chemicals Pvt Ltd. (1997)88 Com cases 245(CLB.)



7. The Learned Counsel for the Respondents, while reiterating various contentions made in their common reply as mentioned above, has further filed written arguments dated 19.12.16 on their behalf. The following are main contentions raised in the written arguments:

i) They have reiterated the present petition is barred by laches and limitation as it filed after a lapse of more than two decades from the date of cause of action. It is also not maintainable as it filed under Section 111A, 397,398 and other sections of Companies Act, 1956 as it

is to be decided in terms of Sections 58,59,241 and 242 of the Companies Act, 2013 since the case was transferred to this Bench from the erstwhile CLB u/s 434(1)(a), which requires this Tribunal to dispose of such matters in accordance with provisions of new Act.

- ii) The Petitioner did not ask or the CLB/courts grant any relief to the Petitioner in the earlier round of litigation with regard to the rights shares or any other relief now claimed in present petition. The Petitioner cannot claim any relief after the order of Tribunal was implemented.
- iii) The Petitioner having knowledge about the rights issue as early as 1995, she ought to have approached the CLB or civil court having jurisdiction for appropriate remedy, if she had any grievance in respect of rights shares, at relevant point of time. The Petitioner knew very well that she has lost her rights in question by her own actions and defaults.
- iv) The Petitioner has filed OS No.22/2000 before the Civil court in Tanuku asking for declaration that the Petitioner was shareholder and the same was dismissed as withdrawn. However, this fact was suppressed. Hence, the Petitioner is stopped from re-agitating this issue in present petition in terms of Section 12 and Order II Rule 2 of Code of Civil Procedure.
- v) The contention of the Petitioner that she paid cash to 2nd Respondent for allotment of shares is totally false. The Petitioner cannot claim any relief basing on the self-serving statement,. The Petitioner has not intimated the Company about the change of her addresses. The Petitioner did not pay anything for rights shares in question to the



Company and even did not submit any application for the same. So, she was not allotted any shares.

vi) It is contended that a registered notice was sent to the registered address of the petitioner available with the Company. However, the petitioner missed such notice either intentionally or otherwise. Under Section 53 of the Companies Act, 1956, a Company is under an obligation to serve a notice on any member either personally or by sending by post to him/her registered address in India. The section also provides an alternative to the member to request the Company for specific mode of dispatch of notices. However, the Petitioner did not make any such request to the Company. In any case, the Company cannot be blamed for not sending the notices to the Petitioner, at this distant point of time.

vii) They further contended that the Company cannot be compelled nor is under obligation to produce any documentary evidence of its service of notice effected on petitioner in the year 1995-96, i.e., after lapse of 17 years. Moreover, under the Companies Act, 1956, the Central Government has prescribed Companies (Preservation and Disposal of Records) Rules, 1956, which prescribes procedure for preservation of records of Company and its tenure. As per the Rules, office copy of the notices served on or sent to the shareholder of the Company and register of dispatch, etc. are not included in the said rules or schedule given thereunder. It is further contended that the Petitioner cannot put the burden on the Company with regard to the sending of the notices after lapse of 17 years. The onus is on the petitioner to prove that no notice



was served on her in respect of rights issue of 1995-96, but she failed to prove anything.

viii) It is contended that the Central Government did not give any finding on the replies filed by the Respondents in its order dated 16.11.2012 under section 399 (4) of the Companies Act, 1956. So the order obtained from the Central Government under section 399(4) of the Companies Act, 1956 was through abuse of process of law.

ix) The Petitioner was supposed to avail civil remedies to claim rights issues at appropriate time and there was no plausible reason(s) for the Petitioner to wait till 2012 to file the present Petition.

x) It is alleged that the Petitioner with her miniscule minority is acting against the interest of the Company and majority and its management. The Company is consistently making profits and also declaring dividends, and this would show that the affairs of the Company are being managed with efficiency. The cases relied upon by the Petitioner has no relevance to the facts and circumstances of present case.

xi) In the above circumstances, the Respondents pray the Tribunal to dismiss the Company Petition with costs.

8. In the light of above discussion of the case, the following points arise for consideration :-

(a) Whether the present Company's Petition is maintainable u/s. 397/398 of the Companies Act, 1956, when the Petitioner was admittedly not holding minimum 10% shares of the Company;



- (b) Whether the Company Petition is within the limitation or it is barred by laches and limitation as contended by the Respondents ;
- (c) Whether the Petitioner was issued offers by the Company for the subscription of rights issues for all three years ie 1991-92, 1995-96 and 2004-05;
- (d) Whether the Acts alleged in the Company Petition constitute acts of oppression and mis-management so as to interfere in the issue by the Tribunal;
- (e) What is the relief the Petitioner is entitled for.



9. It is not in dispute that the Petitioner has approached the Central Government under section 399(4) of the Companies Act, 1956 seeking permission to file a petition in Company Law Board under section 397/398 of the Companies Act, 1956 with regard to right issues made in the year 1991-1992 and 1995-1996. Accordingly, the Government of India has passed an order dated 16.11.2012 (Annexure-4, page 44-48 of material papers filed by the Petitioner) by permitting the Petitioner to file a Petition under section 397/398 of the Companies Act, 1956 against the Management of Gowthami Solvent Oils Private Limited (Respondent Company). So the present petition is maintainable.
10. It is not in dispute that the Petitioner is agitating the issue of rights shares right from the first issue, issued in 1991-1992. The Company has given a reply No. 585 dated 28th November, 1997 (Annexure 11, page 58 of material papers filed by the petitioner) to the petitioner with regard to the

issue of two rights issues i.e., 1991-92 and 1995-96. It is stated therein that offer was given to the petitioner for 1991-92 issue but she did not avail it by depositing DD/amount within stipulated time mentioned in the offer. So far other issue (1995-96) is concerned, it is stated that the petitioner did not register her changed address at that time and it was registered subsequently vide her letter dated.8.8.96 i.e. after rights issue. So admittedly, no offer was given to the petitioner about the second rights issue. However, it was agreed to transfer shares at mutually agreed rate.



As stated supra, the petitioner submitted a representation dated. 20.11.11 (Annexure 29 , page 182) to the Company, i.e., after restoration of her name in the Register of Members of the Company in compliance with order of CLB , by requesting to send her all deprived shares. In this representation, it is clearly stated that an amount of Rs. 35,000/- was paid in cash to second respondent through her husband. However, it was not accepted at that time by saying the rights issue was withdrawn and promised to intimate her as and when new issue is issued. However, the facts remains that the second respondent fraudulently got allotted those shares to himself. And this fact known to the petitioner subsequently and started litigation as mentioned above. The petitioner has claimed all three rights issues in question totalling 5250 shares and enclosed a DD No. 463045 for Rs. 13,65,000/- dated 19.11.11 drawn on HSBC, Vizag Branch. The said amount consisting of Rs.35,000/- for 350 shares for rights issue 1991-92 (1:1), Rs. 2,10,000/- for 2100 shares for 1995-96 issue (3:1) and Rs.11,20,000/- for 2800 shares for rights issue for 2004-

05 issue (1:1). Moreover, oppression and mismanagement is a continuous cause of action. So the petitioner is entitled to question non-issue of Rights share and same is within limitation and contention of respondents in this context is rejected as un-tenable.

11. As stated supra, aggrieved by the non-issue of two rights issues, the Petitioner has filed OP No.26/1999 before Andhra Pradesh State Consumer Dispute Redressal Commission at Hyderabad. However, the same was dismissed by an Order dated 29.11.1999 for lack of jurisdiction. On the very next day an EGM was conducted i.e. on 30.11.1999 and passed a resolution terminating the membership of Petitioner and compulsorily purchase of shares by the existing members of the Company. Accordingly, the Applicant was issued a letter No.GSO/99/2849 dated 11.12.1999 (Annexure-30, page 67 of material papers filed by the Petitioner) intimating about the termination of the membership and compulsorily purchase of her shares, and requested to surrender her share certificate, and indicate fair market value of shares within two weeks from the date of receipt of notice, failing which the Company itself will fix the rates and transfer those shares to any existing member without further notice.



In the above circumstances, the Petitioner was left with no other option except to question the above decision of the Company, in the first instance by duly reserving her right to question rights issue later. Accordingly, the Petitioner has filed Company Petition No. 07/111/SRB/2000 before the then Company Law Board for restoration

of her name in the Register of Members of the Company by reserving her right to agitate the right issue later on. The petitioner is fully justified to file the said case restricting the illegal removal of her name by reserving her right to question the present issue. Even the Company Law Board allowed the said Company Petition by an order dated 22.12.2000, the Company has carried the matter unsuccessfully before the Single Judge, and before Divisional Bench of Andhra Pradesh High Court, and finally to the Apex Court. The Apex Court ultimately dismissed the SLP on 31.10.2011. Subsequently, the Company restored the Petitioner's membership in the Register of Members only on 01.11.2011. Interest was also paid Rs.1,32,000/- (Rupees One Lakh Thirty Two Thousand Only) by cheque dated 19.11.2011.



12. The next issue is whether the acts alleged in the Company petition constituted acts of oppression and mismanagement so as to invoke Sections 397/398 of the Act. As stated supra, the Company started oppressing the petitioner, who is a minority shareholder by holding shares in the Company from the year 1974 by not offering/allotting first rights issue arise in the year 1991-92 to the petitioner and allotting those shares to second respondents fraudulently. Surprisingly, second Rights issues was also deprived to the petitioner on un-tenable ground that changed address of the petitioner was furnished shortly after the second issue was over. Another glaring mistake committed by the Company/Respondent is that the Company did not allot shares out of third rights issue (2004-05) to the petitioner, on the ground the petitioner

was not a shareholder on the day of third issue. If the Respondent Company is fair enough to the petitioner/Minority Shareholders, it should have voluntarily offered third Rights issue to the petitioner on restoring the shares of petitioner pursuant to CLB order as mentioned above. The Company/Respondent, on one hand making allegation that the petitioner was raising vexatious litigation against it, on the other hand, the Company/Respondent itself dragged the litigation upto Apex court and also took so much time to implement orders of CLB. The Company has not changed its mended his ways of dealing with minority shareholders like the petitioners especially when the Company is closely held Company and profit making Company and CLB already held that depriving the shareholding of the petitioner in the Company was illegal. All these acts constitute acts of continuous oppression and mismanagement and these acts justify winding up of the Company but it would certainly prejudice the interest of petitioner and the Company itself as it is admittedly profit making Company.



13. It is not in dispute that the Respondents have made a commitment to restore all the bonus shares etc. in proportionate to 350 shares held by the Petitioner as mentioned above in CMP No.10988 of 01 in LPA No.207 of 01. It is also on record that the Petitioner was consistently making efforts by demanding to allot the Rights issues by enclosing necessary DD's and payments as mentioned above. However, the Company/Respondent for the reasons best known to them has refused to accept it on untenable grounds. The Respondents have opposed the

Company Petition more or less on technical grounds, instead of meeting the ground realities. As stated above, the CLB has already found fault with the Company/Respondent for depriving the rights of the Petitioner and thus directed the Company to restore the shares of the Petitioner with a cost of Rs.2,500/-. The Petitioner got implemented some of the directions with a great difficulty and persuasion. It is true that the Petitioner, at every point of time, has suffered a lot at the hands of the majority shareholders. The Company/Respondent should realise its illegality at least after it suffered in all courts right from CLB to Apex court and act justifiably in the interest of justice. The Company/Respondent can itself voluntarily offer/allot proportionate shares to the petitioner at least out of third Rights issue. The actions of the respondents are arbitrary and vindictive, and against the principles of natural justice.



14. The contention of the Respondents that the commitment to issue bonus shares etc as mentioned above before Hon'ble High Court as mentioned supra was valid only till the disposal of the case and High Court has not passed any order on this issue while disposing of the Appeal is not at all tenable. It is not the case of the Respondents that the High Court has allowed the appeal by them, by setting aside the order of the CLB passed in CP No. 07/2000. When the Order of CLB is implemented, it is just and proper to allot rights issue to the petitioner in proportionate to 350 shares which she is holding and these are only consequential benefits accrues basing on proportionate basis, on restoration of original shares

to the Petitioners. The Company has not disputed the fact that it has issued all the three rights issues in question, and those shares have to be allotted to existing shareholders on proportionate basis. And in fact, those shares were allotted to the second respondents and other existing shareholders of the Company. The second respondent, in addition to rights issues, also got himself allotted the cancelled shares of the petitioner, which the CLB has already declared illegal as stated above. It is not in dispute that as per law rights shares have to be issued first to the existing shareholders in proportionate to their shareholding. The Company/Respondent is opposing each and everything without any reason, with an intention to deprive the petitioner of her legitimate rights out of her shareholding totalling 350. All the shareholders of the company are entitled to receive notices required under AGM/EGM and also entitled to receive corporate benefits such as dividends, bonus shares, rights issues etc. Moreover, it is not the case of the Respondents that the Petitioner has expressed her unwillingness to purchase the rights shares in question. On the other hand the Petitioner has offered sufficient money to allot rights issue and they were not accepted by the Company/Respondent No.2 on untenable grounds. As stated above, the petitioner has already enclosed a DD for Rs. 13,65,000/- and the same was returned vide letter of Company vide No. 391 dated 28th November, 2011(page 191 , Annexure 32).



15. It is also relevant to point out here that the Managing Director of the Company has addressed a letter dated 20.06.2012 to the Joint Secretary,

Ministry of Corporate Affairs, New Delhi. So far as rights issues are concerned, it is stated as follows:

“With reference to the above and during the personal hearing held on 03.05.2012 in your chambers, New Delhi, we were directed to produce the following information;

- a. Payment of costs of Rs. 2500/- towards CLB costs; We have arranged the payment of Rs. 2500/- vide Axis Bank Ltd Cheque No. 311812 dated 09. 11.2011.
- b. Service of rights offer notice to the applicant during 1990-1991, 1995-1996 & 2004-2005 :-

It is humbly submitted the old records of more than 15 years i.e., for the years 1990-1991 & 1995-1996 could not be traced out as most of the records are either destroyed or disposed off as un-wanted.

So far as rights offer issued during the year 2004-05, the same was not served to the applicant Smt. M. Bharati Rao as she was not a member during that period.”

The above contents of letter clearly shows as to how the company and the respondents acted prejudicially against the petitioner in denying her legal rights as a shareholder.

16. The Respondents are not disputing that a notice has to be issued to the Petitioner offering rights issues in question. As stated above, the first rights issue (1991-1992) was illegally denied and there was no offer for the second right issue (1995-1996) on the pretext of the non-availability



of the present address at the relevant point of time. So far as the third issue (2004-2005) is concerned, admittedly, there was no offer at all issued to the petitioner, on the ground that she was not a member during that period, as she was removed from the register of members of the Company. It is not in dispute that the name of the Petitioner was restored pursuant to the orders of CLB.

17. As per law, Members of a Company enjoy certain rights in their individual capacity, which they can enforce individually and these rights are contractual rights and cannot be taken away except with written consent of member concerned. Some of these rights are mentioned below:

- Right to receive notice of General Meeting of the Company, returns, right to transfer shares, etc.

Another right of shareholders is to subscribe to the rights issue. Whenever the Company proposed to increase subscribed capital of the Company by allotment of further shares on right basis the same must be offered to the existing shareholders of equity shares in proportion, as nearly as the circumstances admit of the shares held by them, so that equitable distribution of shares and the holding of shares by each shareholder is not affected by issue of shares on Rights basis. It is also mandated, a proper notice has to be dispatched through registered post or speed post, etc. atleast by granting sufficient time to the shareholders either to subscribe or to reject.



In the instant case, it is not in dispute that the Company is a closely held Public Limited Company. So the contention of the Company that current address of the Petitioner are not available at the time of issue of shares, the litigation is pending, records are not available, the time for preservation of records was over, etc. are not at all tenable and thus they are rejected. Moreover, while contending before the Government that there are no records available with regard to the proof of serving notices about the rights issue, they are denying the same on flimsy grounds. It is not the case of the respondents that the Petitioner has all of a sudden filed the present case. As stated above, the Petitioner making her grievance with the Company right from the first rights issue i.e., 1991-1992. On this ground also, the contention of the respondent that no records are available is not at all tenable and thus, it is rejected. Moreover, principles of natural justice demands that appropriate notice must be given to the parties before taking any substantial decision, especially which affects their rights i.e. termination of her membership.



18. It is settled position of law that the majority has a right to control and manage the affairs of the Company in its best interest. However, the issue to be examined in each case is whether majority power has been exercised in good faith in the interest of the Company or only to deprive minority shareholders/the Petitioner of her rights. The Company has a fiduciary relation towards the minority shareholder as much as the corporation itself or its officers or Directors.

19. The Petitioner is entitled for all the three rights issues as applicable to other shareholders of the company in proportionate to the shareholding of the respective shareholders. The Petitioner was holding 350 shares and thus she is entitled for the shares as mentioned below:-

Year	Initial Shares	Ratio	Issued Shares	Total Shares	Price Per Shares (Rs.)	Amt. Payable (Rs.)
1991-92	350	1:1 @ par	350	700	100	35,000
1995-96	700	1:3 @ par	2100	2800	100	2,10,000
2004-05	2800	1:1 @ premium of Rs.300	2800	5600	400	11,20,000
Total amount payable						13,65,000/-



The circumstances explained above that the Petitioner is a minority shareholder, of a closely held Public Limited Company was made to run from pillar to post, right from CLB to Apex Court. Even though the Judgment of CLB is confirmed, the Petitioner was again forced to approach this Tribunal for the mere consequence after winning the case, which is ultimately confirmed by the Hon'ble Supreme Court of India. The Respondents have raised all frivolous, pleas in opposing the just claim of the Petitioner, which arises pursuant to granting of rights issues in question. The Petitioner was put to untold misery in forcing to approach this Tribunal again. This Tribunal cannot lose sight of frivolous contentions made by Respondents. In view of the above background, continuous oppression on the minority shareholder and mis-management deserves exemplary cost to be imposed to protect the interest of minority

shareholders. Since, this frivolous litigation is prosecuted at the instance of Respondent No. 2 & 3 they have to be saddled with the exemplary cost to be borne by them personally from their personal accounts.

20. For the reasons stated above, the Company Petition bearing number 13 of 2013 (TP No. 97/HDB/2016) is allowed with the following directions:

- i. We direct the Respondents to allot all the three rights issues shares comprising a total of 5250 shares i.e., 350 in 1991-1992, 2100 shares in 1995-1996 and 2800 shares in 2004-2005.
- ii. We direct the Petitioner to pay the amount of Rs.13,65,000/- by way of D.D. to the Respondents within a period of four weeks from the date of receipt of copy of the Order and thereafter two weeks time is granted to the Respondents to allot shares accrued through three rights issues to the petitioner and to rectify the members register.
- iii. We direct the Respondents No. 2 and 3, to pay cost of Rs.50,000/- each to the Petitioner and the same is to be paid from their personal account.



Sd/-

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (T)

RAJESWARA RAO VITTANALA
MEMBER (J)

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