

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP No. 71 of 2008
(TP No.29/HDB/2016)
U/s 111,397, 398, 402, 403 & 406, 237
R/w Schedule XI
of the Companies Act, 1956

In the matter of:

1. Anand Prakash Sanghi
Rep by LR
1) Anjana Sanghi
2) Swathi Sanghi
3) Amit Sanghi

2. Sudhir Sanghi
3. Amit Sanghi
4. Siddarth Sanghi
5. Swathi Sanghi
6. Anjana Sanghi
7. Usha Sanghi
All of them Resident of:
4-3-352 Bank Street,
Hyderabad-500 095

8. Ravi Sanghi
S/o Late Sri Ram Sharan Sanghi
9. Smt. Anitha Sanghi
W/o Ravi Sanghi
10. Aditya Sanghi
S/o Ravi Sanghi
11. Alok Sanghi
S/o Sri Ravi Sanghi

All are resident of H. No. 6-204/31
Sanghi Nagar, RR District (Petitioners No. 8 to 11 are
Impleaded as per order dated 29.09.17
passed In CA No. 131 of 17

...Petitioners

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL



Versus

1. AGA Publication Limited
Situated at Vaartha 396
Lower Tank Bund Road
Hyderabad - 500 080

2. Girish Sanghi
3. Gaurav Sanghi
4. Alka Sanghi
5. Aarti Sanghi
Respondent Nos. 2 to 5 are Residing at:
1-44, P.O. Sanghi Nagar, Ranga Reddy Dist,
Telangana-501 501
6. Superior Printers Private Limited
7. Sradha Ads Private Limited
8. Sphoorthi Marketing Private Limited
Respondent Nos. 6 to 8 Residing at:
4-3-352, Bank Street, Koti
Hyderabad-500 095
9. Ashish Sanghi
1-44, P.O. Sanghi Nagar,
Ranga Reddy Dist,
Telangana-501 501
10. Balemarthi Subhania
6-64, Omarkhandaira,
Sanghinagar, R.R. Dist
Telangana-501 511
11. Yadagiri Reddy
1-5-29, Maruthi ngar, Kothapet
Hyderabad-500 060
12. D. Subramanyam
Flat No. 403, Rajyalakshmi Towers
Sarada Nagar, Ramanthapur
Hyderabad- 500 013
13. Sunil K Pareek
4-3-352, Bank Street, Koti
Hyderabad-500 095

...Respondents

Judgment delivered on 29.09.2017

CORAM:

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



Parties Present:

Counsel for the Petitioners:

- For Petitioner Nos. 1, 3,5&6 : Mr. M.S. Prasad, Senior
Advocate
- For Petitioner No.2 &4 : Mr. A.Chakravarthy, Advocates
Mr.Y.Suryanarayana, Advocate
- For Petitioner No. 7: Mr. Dr. S.V.Rama Krishna,
Advocate
- For Impleading Petitioners: Mr. P. Anil Mukherji, Advocate
- For Respondent No.2 : Mr.S. Chidambaram
& Mr.Giresh Sanghi (Party in
person)

Per: Rajeswara Rao Vittanala , Member (Judicial)

JUDGEMENT

1. The Company Petition bearing CP No. 71 of 2008 (TP No. 29/HDB/2016) is filed by Anand Prakash Sanghi and 6 others U/s 111, 397, 398, 402, 403 & 406 R/w Schedule XI of the Companies Act, 1956, by seeking the following reliefs :
 - a. Setting aside the resolutions alleged to have been passed at the EGM alleged to have been held on 19/03/2007 for non-recognizing the allotment of 20,00,000 shares that were allotted by the first Respondent company on 01/03/1998 and direct the Registrar of Companies, Andhra Pradesh, Hyderabad not to take on record the Form 23 filed by the second Respondent in this regard;
 - b. Setting aside the resolutions alleged to have been passed at the EGM alleged to have been held on 19/03/2007 for non-recognizing the allotment of



84,99,937 shares that were allotted by the first Respondent company on 01/04/2006 and direct the Registrar of Companies, Andhra Pradesh, Hyderabad not to take on record the Form 23 filed by the Second Respondent in this regard;

- c. Setting aside the illegal allotment of 45,00,000 shares and 84,99,937 shares that were alleged to have been allotted to the Respondent group on 19/03/2007 and 22/04/2006 respectively and direct the Registrar of Companies, Andhra Pradesh, Hyderabad not to take on record the Form 2 filed by the second Respondent in this regard;
- d. Directing the first Respondent company to rectify the Register of Members, reinstating the names of the Petitioners and to delete the names of the Respondent group with respect to the shares alleged to have been allotted on 22/04/2006 and 19/03/2007;
- e. Setting aside the illegal appointment of second, third fourth, fifth, ninth, tenth, eleventh and 12th Respondents as Directors of the sixth, seventh and eighth Respondent companies and direct the Registrar of Companies, Andhra Pradesh, Hyderabad not to take on record the Form 32 filed by the second Respondent in this regard;
- f. Setting aside the illegal allotment of 40,000 shares that were alleged to have been allotted to the third and ninth Respondent in sixth, seventh and eighth Respondent companies and direct the Register of Companies, Andhra Pradesh, Hyderabad not to take on record the Form 2 filed by the second Respondent in this regard;
- g. Setting aside the illegal shifting of registered office of the sixth, seventh and eighth Respondent companies



and direct the Registrar of Companies, Andhra Pradesh, Hyderabad not to take on record the Form 18 filed by the second Respondent in this regard; etc.,

2. The brief facts of the case, as stated in the Company petition, which are relevant to the facts in issue, are as follows:

- 1) The first Respondent Company was originally incorporated on 18.12.1992 under the name "ABK Publication Limited". Subsequently the company was acquired by way of a slump sale of all the 63 shares that were held by the erstwhile Promoters, were acquired by Sanghi family on 21.10.1994. All the 63 shares were equally divided and 9 shares each were equally divided in the name of Late Mr. Ram Sharan Sanghi, Smt. Kamala Rani Sanghi, Mr. Ravi Sanghi, Second Petitioner, Seventh Petitioner, second Respondent and fourth Respondent. The second Petitioner and second Respondent were inducted into the Board as Directors of first Respondent Company on 15.11.1994 and thereafter on 11.05.1995, the seventh Petitioner was also inducted as a Director of first Respondent Company. During May 1995, the erstwhile Promoters/ Directors resigned from the Board and the Board was left with the second, seventh Petitioners and second Respondent as Directors of first Respondent Company.
- 2) The seventh Petitioner, who was inducted into the Board on 11.05.1995, had to resign from Directorship on 05/10/1996 at the request of the second Respondent. In the casual vacancy created with the resignation of the seventh Petitioner, the fourth Respondent, who is the wife of the second Respondent, was appointed as a Director.



- 3) The first Respondent Company is basically engaged in the business of publishing Telugu daily newspaper in the state of Andhra Pradesh. The newspaper mainly covered all political issues and it had a reasonable circulation in the state.
- 4) By virtue of the nature of the business, the second Respondent had the golden opportunity to interact with different people of different sections of the society. As the newspaper was mainly focusing on political issues in the state of Andhra Pradesh the second Respondent had to meet various political leaders of different parties and interact with them for interviews, views and discussions etc. Thus the first Respondent Company was used as a vehicle by the second Respondent to further his personal image which was already on the edifice of 'Sanghi' name. It would not be an exaggeration to say that the family sank huge money in this company mainly to help the second Respondent's political name and career, as till then, he was an unknown person outside the family circle.
- 5) The second Respondent, who is a boorish braggadocio with, out of the world lifestyle tastes and a mania for authority wanted to become a full time politician and expressed his willingness to the family members, who in turn extended their valuable genuine support and encouragement to the second Respondent with a fond hope that he would spend some time and energy for furthering Sanghi's image and business interests. All the family members, including that of Petitioner group, worked together for the second Respondent to have a good political beginning and career. As a result of hard work and support extended by the family members, the second Respondent became a Member of



Parliament, Rajya Sabha and continues to hold the position as on the date of this petition. After becoming a Member of Parliament, the attitude of the second Respondent took a complete "U" turn. The second Respondent in order to retain his status and popularity in the political arena, decided to use the newspaper run by the first Respondent company for his own personal benefits and self-aggrandizement and in the process decided to maroon the Petitioner group and hijack the first Respondent company from the hands of the Petitioner group. The second Respondent was well aware that the Petitioners being equal shareholders holding 50% of the paid up capital, would not allow the misuse of the business of the company for his own personal benefits.

- 6) It is alleged that in order to hijack the first Respondent Company from the hands of the Petitioner group, the second Respondent wanted to expel the Petitioner group from the first Respondent company. In the process, the second Respondent created a peculiar and odd situations and circumstances for forcing the second Petitioner to resign from Directorship on various occasions. The second Petitioner in order to protect the interest of the first Respondent Company, and who did not want to precipitate the issue further, resigned from the Board on his own on 15.03.2005. Though the second Petitioner resigned from the Board, the Petitioner group decided to retain their respective shares constituting 50% of the paid up capital with them, so that no material and major financial decisions affecting the interest of the first Respondent company can be taken without the knowledge of the shareholders/ Petitioners. The second Respondent



realizing that 50% ownership still belongs to the Petitioner group, decided to convert the Petitioner group into a mere minority and therefore filed forms 23, 5 and 2 with RoC, AP, Hyderabad with all false contents. The second Respondent taking undue advantage of his position as Managing Director has-

- a. Filed form 23 on 10/08/2007 with RoC, A.P., and Hyderabad. In the said Form he has falsely claimed that the shareholders at the Extraordinary General Meeting held on 19.03.2007 have passed resolutions (i) amending capital clause in the Memorandum of Association so as to increase the authorized share capital from Rs. 10.50 crores to Rs. 15 crores (ii) for borrowings under the provisions of Section 293(1) (d) of the Act and (iii) for non-recognition of 20,00,000 shares and 84,99,937 shares that were already allotted by the first Respondent company on 01.03.1998 and 01.04.2006.
- b. Filed form 5 on 12.04.2007 with RoC, A.P., Hyderabad in which he has made a false statement that the shareholders at the EGM held on 19.03.2007 have passed resolution authorizing increase of authorized share capital from Rs. 10.50 cores to Rs. 15 crores.
- c. Filed Form 2 on 06.04.2007 with RoC, A.P., Hyderabad Hyderabad, alleging that 84,99,937 shares were allotted to Respondent group by the Board of Directors at its meeting held on 22.04.2006.
- d. Filed Form 2 on 14.08.2007 with RoC, A.P., Hyderabad Hyderabad, alleging that 45, 00,000 additional shares were allotted to him by the



Board of Directors at its meeting held on 19.03.2007.

- 7) It is stated that the first Respondent company did not hold any general meeting on 19.03.2007 as falsely claimed by the second Respondent in the Forms 5 and 23. The Petitioners holding 50% of the paid up capital of first Respondent Company did not receive any notice calling for any EGM on 19.03.2007 and no resolution was passed as falsely claimed by the second Respondent in the Forms. The second Respondent, who has decided to become a major shareholder, has filed this Form completely violating the law and procedure in this regard. The second Respondent ought to have known that shares once allotted by any company cannot be de-recognized or cancelled by the shareholders as it would tantamount to capital reduction. The first Respondent company had allotted shares on two occasions, firstly 20,00,000 shares on 01.03.1998 and 84, 99,937 shares on 01.04.2006 to both Petitioner and Respondent groups. The second Respondent himself has signed Form 2 for both the allotments, and has filed the Forms with RoC, A.P., and Hyderabad on 05.03.2007.



- 8) The above said allotments would place both the Petitioner and Respondent groups on equal footing as both the groups are holding 50% each. The second Respondent, who wanted to grab all the shares of the Petitioners, under the impression that filing of Form 23 would make the allotments invalid, filed the Form 23, falsely alleging that a special resolution was passed by the shareholders at the EGM held on 19.03.2007 for non-recognition of shares that were already allotted only to the Petitioner group. He has also claimed that

the non-recognized 20, 00,000 shares and 84, 99,937 shares were factually allotted by the Board of Directors to the Respondent group. The said special resolution has been filed under the provisions of section 293 of the Act. Even assuming, but not admitting that there was an EGM on 19.03.2007, the special resolution passed for non-recognition and recognition of shares that were allotted by the Board shall not be treated as a valid resolution, for the reason that such a resolution, if at all passed, would be in sheer violation of the provisions of the Act. There is no provision under the Companies Act, 1956 that provides for any de-recognition of shares that were already allotted by any company. Nevertheless, the second Respondent himself has claimed that the de-recognized shares were factually allotted by the Board. The second Respondent ought to have known that the first Respondent Company is a public limited company, and, therefore, the provisions of section 81 of the Act are applicable to the company. He should have also known that as per clause 57 of the Articles of Association the power to issue additional shares vests with shareholders, and not with the Board of Directors. Therefore, the impugned Forms 5 and 23 are illegal and ultra vires the MOA and AOA of the Company, apart from the Company Act. The second Respondent, in the course of making an attempt to show him as a major shareholder has invented a new concept "non-recognition" of shares for which no provision is available under the present Companies Act, 1956.

- 9) The second Respondent has also filed Form 2 with RoC, Hyderabad on 06.04.2007 and 14.08.2007 claiming that the first Respondent company has issued additional



84,99,937 shares to Respondent group at the Board meeting held on 22.04.2006 and 45,00,000 shares to second Respondent himself at the Board meeting held on 19.03.2007. The first Respondent Company, being a public limited company is also governed by the provisions of section 81 of the Act. The second Respondent, while trying to allot additional shares to himself and his group, has completely failed to realize that no additional shares can be issued without the authority of the shareholders. The second Respondent has neither complied with the provisions of section 81 of the Act nor with Clause 57 of the Articles of Association, for both the alleged allotments on 22.04.2006 and 19.03.2007. No General Body Meeting was held wherein the allotment of 84,99,937 and 45,00,000 shares to the Respondent group was approved by the shareholders. Therefore the said allotment of 84,99,937 to Respondent group and 45,00,000 shares to second Respondent ex-facie illegal and they are liable to be set aside.

- 10) It is stated that Forms 23, 5 and 2 along with the attachments filed by the second Respondent on 06.04.2007, 10.08.2007 and 14.08.2007 with RoC, A.P., Hyderabad shall be treated as invalid and infructuous as the details contained therein are all false, fabricated and manipulated and are against the provisions of companies Act, 1956 and thus oppressive to the Petitioners. While filing Forms illegally with RoC, AP, the second Respondent deliberately failed to appoint a Company Secretary in first Respondent Company though it is mandatory under the provisions of the Companies Act, 1956.



11) Apart from indulging in various acts of oppression, the second Respondent has also mismanaged the affairs of the first Respondent Company as detailed below.

a) The first Respondent Company being a publisher / member of Audit Bureau of Circulation (ABC) has failed to maintain essential books, documents and records to facilitate a proper audit that is conducted by the Audit Bureau of Circulation an apex organization, on a regular basis and consequentially has not obtained the certificate for several years. ABCs primary objective is to arrive at and certify authentic circulation figures representing "Net Paid Sales of member publications" and disseminate the data for the use of space buyers. The first Respondent company, though being a publisher member of ABC, has failed to co-operate with the ABC and correspondingly has not got its audit certificate for several years. This is mainly on account of the fact that first Respondent company was making a tall and false claim about its circulation of its daily paper without full and proper records and documents to support its false claim. It was afraid that this claim would stand exposed badly if it is allowed/ permitted an audit of circulation by ABC. This clearly shows the malafide intention of the Respondent group who year after year mismanaged the first Respondent company.

b) A perusal of the balance sheet as at 31.03.2006 and 31.03.2007 would reveal that the first Respondent company had a huge balance of Rs.21,78,49,064/- and Rs.25,65,99,805/- respectively under the Head "Sundry Debtors".



The said amounts constitute almost twenty five percent of the turnovers reported in the respective financial years, which is very much abnormal in the industry of this nature. The second Respondent failed to maintain a balance between the turnover and debtors and has allowed the debtors to rise to the level of one fourth of the turnover. Also the reporting of the sundry debtors is not as per the format prescribed under schedule VI to the Act, thereby violating the provisions of section 211 of the act.

- c) The second Respondent has also diverted huge amounts through “loans and advances” account as is evident from the balance sheet as on 31.03.2007. The balance under the head “loans and advances” show an amount of Rs.5,75,48,580/-. The first Respondent company is engaged in the business of printing, publishing and circulation of newspapers and not in any financial related activities and therefore, does not warrant such a huge balance under the head “loans and advances”.
- d) The second Respondent has also deliberately suppressed the details of unsecured loans that were accepted by the first Respondent Company. The schedule that is given along with the balance sheet do not contain the breakup of the unsecured loans but instead reflects the total figure which is in violation of the provisions of section 211 of the Act read with Schedule VI.
- e) A perusal of the auditor’s report would reveal that the first Respondent Company has contingent liabilities in the form of disputed income tax



demand, to the tune of Rs.23 lakhs and appeals are pending in various forums. Such a liability has arisen before because of the inability and inefficiency of the second Respondent. This is yet another instance of mismanagement of the affairs of the first Respondent company by the second Respondent.

- f) Another alarming Head in the books of account is "Sales Commission" under which Head, expenses to the tune of Rs. 12.85 crores has been booked for the year ending 31.03.2007. This single head constitutes about thirty three percent of the total expenditure of the first Respondent company during the said year. Again here there is a huge mismatch between the turnover and the sales commission, which has a direct link to the turnover. The figures reportedly show that the first Respondent Company managed by the second Respondent has paid sales commission @12.67% to its vendors. The second Respondent without the knowledge and consent of the Board of Directors has unilaterally decided to pay such a huge percentage as sales commission.

- g) Further, the balance sheet and profit and loss account do not comply with the following accounting standards prescribed by the Institute of Chartered Accountants of India (ICAI), thus violating the provisions of Section 211 (3A to 3C) of the Act.

- (i) AS-3: Cash Flow Statements-

The first Respondent company failed to prepare and present Cash flow statements



for which financial statements were presented.

(ii) AS-9 : Revenue Recognition-

The first Respondent company failed to disclose the revenue recognition policy followed by the company.

(iii) S-18: Related Party Disclosures-

The financial statements failed to disclose the related parties relationships and transactions between the first Respondent company and its related parties.

- h) The illegal acts of the second Respondent did not stop with the Petitioners and first Respondent company but also extended to other entities, where the Petitioners had a huge stake. The sixth Respondent Company is a company registered in the State of Andhra Pradesh. The Petitioners group have huge stake in the sixth Respondent Company through the first Respondent Company. The first Respondent company has entered into few contracts with sixth Respondent company. Third Petitioner and thirteenth Respondent are the Directors of the sixth Respondent Company right from its inception and they are also in charge of the day to day affairs of the sixth Respondent Company. The second Respondent with an ulterior motive of taking control over sixth Respondent company has unauthorizedly filed the following Forms with RoC, AP to show that both the Board and the share capital are under his control.



- (1) Filed Form 32 on 03/06/2008 to show that second, fourth, tenth, eleventh and twelfth Respondents were appointed as Directors of sixth Respondent company w.e.f. 30/03/2005.
- (2) Filed Form 32 on 04/06/2008 to show that third, fifth and ninth Respondents were appointed as Directors of sixth Respondent company w.e.f. 01/04/2007.
- (3) Filed Form 2 on 06/06/2008 to show that 40,000 shares were allotted to third and ninth Respondents at the Board meeting of sixth Respondent company held on 15/05/2008.
- (4) Filed Form 18 on 09/06/2008 to show that the registered office of sixth Respondent company has been shifted from Bank Street to Lower tank bund road w.e.f. 15/05/2008.

- (i) It is stated that all the above Forms were filed by the second Respondent without any authority and consent of the Board of Directors and shareholders of sixth Respondent company. From the inception, the Board of sixth Respondent company consists of the third Petitioner and thirteenth Respondent and there has been no change in the composition of Board of Directors. No Director was either inducted or resigned from the Board of sixth Respondent Company all these years. This being the fact, the second Respondent has no locus standi to file the above said forms with RoC, AP falsely stating that new Directors were appointed into the Board, additional shares



were allotted and the registered office of sixth Respondent Company has been shifted.

- (j) The second Respondent ought to have known that sixth Respondent Company is governed by the provisions of Companies Act read together with its Articles of Association and mere filing of forms would not make any person a Director and shareholder of sixth Respondent company. The second Respondent shall be directed to produce evidences to prove that the contents mentioned in all the Forms filed by him on 03/06/2008, 04/06/2008, 06/06/2008 and 09/06/2008 as mentioned above with RoC, Andhra Pradesh, Hyderabad are true and no part is false and misleading.
- (k) Hence, the appointments alleged to have been made on 30/09/2005 and 01/04/2007, alleged allotment of 40,000 shares on 15/05/2008 and alleged shifting of registered office are invalid and illegal and should not be given effect to; for the reason that the second Respondent who has signed and filed the Forms is no way connected to the sixth Respondent company and its affairs and the Forms have been filed without due compliance of law and procedure.
- (l) Similarly seventh and eighth Respondents are Companies registered in the state of Andhra Pradesh. In both these companies, the Petitioners Company has entered into few contracts with both the seventh and eighth Respondent companies as well. The second Respondent with an ulterior motive of taking control over both the



seventh and eighth Respondent companies has unauthorizedly filed the following Forms with RoC, AP to show that both the Board and the share capital of the seventh and eighth Respondent companies are under his control.

- (1) Filed Form 32 on 05/06/2008 to show that the second fourth, tenth, eleventh and twelfth Respondents were appointed as Directors of the seventh and eighth Respondent companies w.e.f 30/09/2005.
- (2) Filed another Form 32 on 05/06/2008 to show that third, fifth and ninth Respondents were appointed as Directors of both the seventh and eighth Respondent companies w.e.f. 01/04/2007.
- (3) Filed Form 2 on 06/06/2008 to show that 40,000 shares were allotted to third and ninth Respondents at the Board meeting of both the seventh and eighth Respondent companies held on 15/05/2008.
- (4) Filed Form 18 on 09/06/2008 to show that the registered office of both the seventh and eighth Respondent companies have been shifted from Bank Street to Lower tank bund road w.e.f 15/05/2008.
- (5) It is submitted that all the above Forms were filed by the second Respondent without any authority and consent of the Board of Directors and shareholders of seventh and eighth Respondent companies. The second Respondent has no locus standi to file the above said form with RoC, AP falsely stating that new Directors were



appointed into the Board, additional shares were allotted and the registered office of seventh and eighth Respondent companies has been shifted. All the contents mentioned in the above Forms are void ab initio. The second Respondent who has signed himself and filed the Forms with RoC, AP has no authority to file the same as he is a total stranger as far as both the seventh and eighth Respondent companies are concerned.

- (6) Therefore the appointments alleged to have been made on 30/09/2005 and 01/04/2007, alleged allotment of 40,000 shares on 15/05/2008 and alleged shifting of registered office are invalid and illegal and should not be given effect to, for the reason that the second Respondent who has signed and filed the forms is no way connected to both the seventh and eighth Respondent companies and its affairs and the forms have been filed without due compliance of law and procedure.
- (7) It is submitted that the second Respondent showed persistent negligence and total disregard for the provisions of Companies act, 1956, Articles of Association in preparation and presentation of its financial statements besides acting in a manner oppressive to the interest of Petitioners. And they shall be treated as null and void.
- (8) It is submitted that all the resolutions that were alleged to have been passed at the



Extraordinary General Meeting alleged to have been held on 19/03/2007 are invalid and illegal and should not be given effect to, for the reason that the said meetings, if at all held, were held without due compliance of law and procedure and the resolutions alleged to have been passed thereat are in fructuous.

- (m) It is therefore submitted that the second Respondent has not only been mismanaging the affairs of the first Respondent Company by manipulating records but his acts have resulted in oppression and against the interest of first Respondent company. And the balance of convenience will be against the Petitioners if the Hon'ble Bench does not intervene and pass appropriate interim orders in view of the serious allegations of the oppression. It is further contended that the affairs of the first Respondent Company are being conducted in a manner prejudicial to public interest and members of the Company and is fit to wind up under just and equitable ground but if any such an order is passed, it would unfairly prejudice the interest of members. Therefore, the Tribunal is prayed to interfere in the subject matter by passing appropriate orders as it thinks fit and just as to bring to an end the matters complained in the instant case.



3. Shri. Girish Sanghi, the second Respondent herein, has filed counter/ written submissions dated 10th January 2017. The main contents as raised by him are as follows:

- (1) One of the important qualifications for filing a company petitions U/s 397 and 398 is that that the Petitioner should have at least 10% of the share capital of the Company as on the date of filing a petition. However, it is alleged that the Petitioners did not hold any shares in the Company as reflected in annual return for the year ended 31-03-2008. So, the claim of Petitioner that they are holdings 43.75% of the paid up capital is totally denied and the petition itself is not maintainable.
- (2) It is alleged by misusing digital signatures of 2nd Respondent, the Petitioners have been illegally allotted themselves of the shares in Respondent No. 1 Company. It is further alleged that the second Respondent has given his digital signature to Anand Prakash Sanghi (first Petitioner herein) as he is his elder brother in good faith. However, by misusing his digital signature, the first Petitioner has uploaded the fraudulent allotment on 05-03-2007. He has not authenticated list of allottees made on 01-03-1998 and 01-04-2006. The annual returns of the Company as on 29-09-2008 disclose paid up capital is Rs.15,00,00,000/- divided into 1,50,00,000/ shares of Rs. 10 each and shareholders list does not reflect the shareholding of the Petitioners at all , on this ground itself , the petition is liable to be dismissed without going into details of other contentions made by the Petitioners. As per extant provisions, the said return should have been filed within 30 days with the Registrar of Companies in physical mode. During the years, 1998 and 2006, the facility of filing digital forms in electronic mode was not in vogue. So this itself shows that the alleged Forms filed on 01.4.2006 and



01.03.1998 are fraudulent. The Petitioners have not produced an iota of evidence regarding share certificate, amount remitted to Respondent No. 1 Company towards alleged share allotments to themselves, relevant Board resolution allotting the same etc.

- (3) It is contented that the question of issuing notice to the Petitioners for general meeting held on 19.03.2007 does not arise, as they are not shareholders at all.
- (4) Further it is stated that after the advantage of Indian Readership (IRS), Publishers are free to choose either Audit Bureau of Circulation (ABC) or IRS or National Readership Survey (NRS) for the claim of circulation. When there was delay in getting ABC certificate, IRS survey was chosen as a principal source of dissemination information about its readership. He has stated that there was an excellent improvement in the turnover of the Company from 1995 -96 to 2007-08.
- (5) He has furnished the details of Income Tax dues, interest and penalties as detailed below:

Name of Statute	Nature of Duties	Amount(Rs).	Period & Forum of Dispute
Income Tax	Interest	52,600	A.Y. 96-97, ITAT
Income Tax	Penalty	60,000	A.Y. 96-97, ITAT
Income Tax	Interest	256,800	A.Y. 99-2000 ITAT
Income Tax	Penalty	480,000	A.Y. 99-2000 ITAT
Income Tax	Penalty	14,50,000	A.Y. 2003-04 CIT(A)

Interest and Penalties of Rs.57,600, Rs.256,800 and Rs.480,000 were dropped by the ITAT Order dated 19th December, 2007.

Penalty and Penalties of Rs. 14,50,000, The Appeal No. 0374/06-07 is still pending with CIT(A) II, Hyderabad.

- 6) It is stated that the Petitioner are trying irrelevant issues which cannot be termed as mismanagement. In



the general course of business, the business executives and General Managers working for the company are given certain powers and Managing Director will have overall superintendence on the affairs of the company.

- (7) It is asserted that majority shareholders (Superior printers(R6) are , Gaurav Sanghi and Ms. Aarti Sanghi) holding 99.98% shares and balance shares in the name of some Vartha employees. Moreover, the Petitioners are going beyond the scope of present litigation and they have no locus standi to question the affairs of the Company.
- (8) It is further stated that Respondent Nos.7 and 8 had all along independent Directors and their shareholdings is as follows:

Sraddha Ads Pvt Ltd

Name of the Shareholder	No. of Shares Held
P. Kusuma	10
G. Purandhara Rao	10
Ms. Aarti Sangh	4990
Gaurav Sanghi	24990
Aashish Sanghi	20000
Total	50000

Sphoorti Marketing

Name of the Shareholder	No. of Shares Held
K. Satyanandam	10
B. Chandrashekar	10
Ms. Aarti Sangh	4990
Gaurav Sanghi	24990
Aashish Sanghi	20000
Total	50000

- 9) The actual shareholding pattern as per annual return of the Company as on 20-09-2008 is as follows:



1. Gireesh Kumar Sanghi	4999946
2. Gireesh Kumar Sanghi (HUF)	2000009
3. Alka Sanghi	3500009
4. Gaurav Sanghi	3500009
5. Aarti Sanghi	1000009
6. Smt. Kamala Rani Sanghi	9 shares
7. Ravi Sharan Sanghi	9 shares
Total	1,50,00,000 shares

4. While pending the petition, Shri. Ravi Sharan Sanghi, S/o. Late. Sri. Ram Sharan Sanghi and Smt. Anita Sanghi, W/o. Shri. Ravi Sanghi, Shri. Aditya Sanghi, S/o. Ravi Sanghi, and Shri. Alok Sanghi, S/o. Ravi Sanghi have filed in CA No. 131 of 2017 in CP No. 71 of 2008, by inter-alia seeking directions to implead them as Petitioner Nos 8 to 11 in the present CP No.71 of 2008 (TP No.29 of 2016) to restore the allotment of 20,00,000 shares and 84,99,937 shares originally allotted by the R1 Company (AGA Publications Limited) on 01.03.1998 and 01.04.2006 respectively, consequently to set-aside subsequent allotment of 45,00,000 shares alleged to have been allotted to the 9th Respondent and his family on 19.03.2007. They have contended as follows:

- ✓ The applicants are shareholders of Respondent No.8 (Spoorthi Marketing Pvt. Ltd.) which was promoted by Sanghi Family in the year 1994 with 63 equity shares of Rs. 10/- each these shares were equally divided among Sanghi family members including the first applicant (Ravi Sanghi) who acquired 9 equity shares to his credit out of 63 shares.



- ✓) The Respondent No.8 made an allotment of 20,00,000 equity shares of Rs. 10/- each on 01-03-1998 among Sanghi family members. Accordingly the Applicants No.1 to 4 were allotted 1,250,000 equity shares of Rs. 10/- each and Form No.2 was also filed by the Respondent No. 8 Company with ROC, Hyderabad.
- ✓ On 01-04-2006, the Respondent No.8 Company made further allotment of 84,99,937 equity shares of Rs. 10/- each among Sanghi family members out of which the Applicant Nos. 1 to 3 were allotted 5,31,250 equity shares each while the 4th Applicant was allotted 5,31,187 equity shares, total 21,24,946, and the total paid-up share capital of 8th Respondent as on that date was 1.05 crores equity shares of Rs. 10/- each while the Applicants are holding 26,24,946 equity shares of Rs. 10/- each. Hence all the Four Applicants together are holding approximately 25% of equity in the 8th Respondent Company.
- ✓ They have also relied upon judgment of the Hon'ble Supreme Court passed in Civil Appeal Nos. 10940-10941 of 2014 in Baluram vs. P. Chellathangam & ors and another judgement of Apex court in Dale and Carrington Invt. P. Ltd. Vs. P.K. Prathapan and others



Therefore, the CA No. 131 of 2017 is allowed by separate order dated 29.09.2017 and therefore, they are arrayed as Petitioners Nos. 8 to 11 to the main Company Petition.

5. The Petitioner Nos.1, 3, 5 & 6 have filed a rejoinder dated 18.04.2007 to the reply counter/written submissions dated 10.01.2007 filed by the 2nd Respondent. The following are their main contentions raised;

- a) As per section 399(1)(a) not less than 1/10th of the total numbers of its members or also any member or members holding not less than 1/10th issued share capital of the Company shall have right to apply under sections 397 or 398 of the Companies Act, 1956. The Petitioner No. 2 & 7 admittedly are shareholders by holding 9 shares each of total initial shares of 63, and thus the above requisite condition is fulfilled, apart from the subsequent share allotments made and de-recognised in question. Therefore, the requisite conditions as prescribed under the provisions are complied with and also section 3(1) A of the Companies Act, 1956. Hence, the petition is maintainable.
- b) The custody of the Digital Signature will always be with the subscriber and it cannot be given to any one and thus question of tampering or misuse is ruled out. Even if the allegation of 2nd Respondent i.e. Signature was misused by the 1st Petitioner; the 2nd Respondent should have filed a criminal complaint before the police or the court about the alleged misuse. However, admittedly the second Respondent did not raise any objection and the fact of impugned allotments made on 1.3.98 and 1.4.06 was not disputed by the second Respondent till reply dated 10.01.2017, for the case filed in the year 2008. The contention of the 2nd Respondent that Digital Signature was misused by 1st Petitioner is absolutely false and denied. If the Form -2 & 3 was uploaded on 05.03.2017 and the Chartered Accountant/Company Secretary also signed in Form with his Digital Signature, having kept quiet for all these years are baseless allegations of misuse.



6. Heard, Shri.M.S.Prasad along with Shri.A.Chakrvarthy, learned counsels for the Petitioners 1,3,5 &6 and Shri.P.Anil Mukharji, learned counsel for proposed Impleading Applicant, Shri.Y.Suryanarayana, learned counsel for the Petitioners No.2 &4, Dr.S.V.Rama Krishna, learned counsel for the Petitioner No.4, Shri.S.Chidambaram, PCS for Respondents and Shri.Giresh Sanghi, second Respondent, party -in -person.

7. (1) The case was initially filed before the then Company Law Board, Chennai on 14th November, 2008. The CLB passed the following interim order dated 14th November, 2008.

'In the meanwhile, considering the apprehension expressed on behalf of Petitioners and in view of serious disputes involved in the Company petition and in the paramount interest of the Company, it is hereby directed that the Respondents will not alienate or sell any of the fixed assets held by the Company without leave of the Bench until further orders. The matter will be heard on 27.11.2008 at 2.30 PM in regard to interim reliefs on account of shareholding pattern and composition of Board of Directors of the Company'

Accordingly, the case was listed for hearing on 27.11.2008 and passed the following further interim order

"In the meanwhile, considering the apprehension expressed on behalf of Petitioners, the Respondents shall maintain status quo in regard (1) to shareholding pattern and (ii) composition of the Board of Directors of the Company until further orders"

(2) Upon constitution of NCLT Bench at Hyderabad, in pursuant to abolition of Company Law Board, all the cases including the present case, which falls under the



jurisdiction of this Bench, are transferred to this Bench in June, 2016. Accordingly, the case was taken on record of this Bench and thus, posted on various dates viz: 21.07.2016, 08.08.2016, 01.09.2016, 09.09.2016, 24.10.2016, 18.11.2016, 21.12.2016, 28.12.2016, 30.12.2016, 05.01.2017, 10.01.2017, 24.01.2017, 07.02.2017, 22.02.2017, 07.03.2017, 10.03.2017, 30.03.2017, 24.04.2017, 15.06.2017, 29.06.2017, 13.07.2017, 21.07.2017, 25.07.2017. The case was adjourned on those dates at the request of one party or the other by citing so many grounds.

8. Shri M.S. Prasad, Senior Advocate made principle arguments on behalf of all Petitioners supported by other counsels representing respective parties. The Learned Senior counsel, while reiterating the averments made in the Company petition, has further relied upon the judgment of Hon'ble Supreme Court rendered in Dale and Carrington Invt(P) Ltd. & another Vs. P.K. Prathapan and others (2005)1 SCC 212.



Shri S.Chidambaram, learned PCS for the Respondent No. 2, while reiterating the averments/contentions made in the counter/written submissions dated 10th January, 2017, has further relied upon the judgement rendered by the Hon'ble Supreme Court in SP Chengalvaraya Naidu Vs. Jagannath (Manu /SC/0192/1994) saying fraud vitiates everything. Another judgment of CLB, Chennai rendered in Srichand Bajaj Vs. Bajaj Vs. Bajaj Promoters (P) Ltd. (2007)76 SCL 8 (CLB Chennai by saying that mere statutory returns without supported by any primary documents will not have evidentiary value.

10. After analyzing the entire issue basing on all the pleadings along with material papers, in the light of extant law and Memorandum and Articles of Association of the Respondent No. 1 Company, the following issues arise for consideration::

- (1) Whether two allotment of shares made on 1st March, 1998 and 1st April, 2006 are validly made as per Memorandum and Articles of Association of the Company and Companies Act, 1956 or not :
- (2) Whether the subsequent non-recognition of above shares is in accordance with law or not :
- (3) Whether subsequent allotments made by the Respondent No. 1 Company under the control of second Respondent allotting all shares of the Company exclusively among the family members of second Respondent and his group leaving the Petitioners group altogether, are valid or not:
- (4) If so, what is the relief, the Petitioners are entitled for:

11. It is not in dispute that the first Respondent Company was originally registered as a Public Limited Company on 18th December, 1992 with Registrar of Companies, Andhra Pradesh, and Hyderabad bearing the name of "ABK PUBLICATIONS LIMITED". It was subsequently taken over by Sanghi Group represented by the Petitioner and Respondent group by acquiring all the shares that were held by the then management. During February 1998, the name of the first Respondent Company was changed as "AGA PUBLICATIONS LIMITED". The main business of the Company is printing, publishing and circulating books, newspapers, magazines etc.



12. Subsequently, Form-2, pursuant to section 75(1) of the Companies Act, 1956, Return of allotment, was uploaded with Registrar of Companies, vide SRN : A11143922 dated 06.03.2007 by allotting 20,00,000 equity shares at nominal amount per share at Rs. 10-/ each by enclosing a list of allottees dated 1st March, 1998. It is stated that entire amount Rs. 2,00,00,000 @ Rs. 10 each was paid. And the list enclosed is as follows::

AGA PUBLICATIONS LIMITED
LIST OF ALLOTTEES DATED 1ST MARCH, 1998

NAME OF ALLOTTEE	NO. OF SHARES
Shri Anand Prakash Sanghi 4-3-352, Bank Street, Hyderabad	1,25,000
Smt.Anjana Sanghi 4-3-352, Bank Street, Hyderabad	1,25,000
Mr.Amit Sanghi 4-3-352, Bank Street, Hyderabad	1,25,000
Ms.Swati Sanghi 4-3-352, Bank Street, Hyderabad	1,25,000
Shri. Sudhir Sanghi 4-3-352, Bank Street, Hyderabad	1,25,000
Smt.Usha Sanghi 4-3-352, Bank Street, Hyderabad	1,25,000
Ms.Pooja Sanghi 4-3-352, Bank Street, Hyderabad	1,25,000
Mr.Siddarth Sanghi 4-3-352, Bank Street, Hyderabad	1,25,000
Shri. Ravi Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	1,25,000
Smt. Anita Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	1,25,000
Mr.Aditya Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	1,25,000
Mr.Alok Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	1,25,000



Shri Gireesh Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	1,25,000
Shri Alka Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	1,25,000
Mr.Gaurav Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	1,25,000
Mr.Ashish Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	1,25,000
TOTAL SHARES	20,00,000

This form is duly signed digitally by the Managing Director (the Second Respondent) by declaring that he has been authorized by the Board of Director's resolution dated 01.03.1998 and it was also certified by Mr.Jayant Palnitkar, Company Secretary/Chartered Accountant.

" Declaration:

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. I have been authorized by the Board of Directors resolutions' dated 01/03/1998.

To be digitally signed by

Managing Director or Director or Manager of
the Company

Gireesh
Kumkar
Sanghi



Certificate:

It is hereby certified that I have verified the above particulars from the books of account and records of M/s

AGA PUBLICATIONS PRIVATE LIMITED

and found them to be true and correct.

Chartered Accountant or Cost Accountant or
Company Secretary (in whole-time practice)

JAYANT
PALNIT
KAR

The above lists consisting of sixteen members, in which all the seven Petitioners along with Girish Sanghi (2nd Respondent), Gaurav Sanghi (3rd Respondent), Alka Sanghi (4th Respondent) & Ashish Sanghi (9th Respondent) apart from others have been allotted equally by allotting 1,25,000 totaling 20,00,000 shares in the Respondent No.1 Company.

13. Another Form No.2 under section 75 (1) of the Companies Act, 1956, Return of allotment, was also uploaded with ROC vide SRN: A 11144185 dated 06.03.2007 by allotting 8,499,937 equity shares @ Rs 10 each for total amount of Rs. 84,999,370/, which was paid. The list of allottees dated 1st April, 2006 is as follows:

AGA PUBLICATIONS LIMITED
LIST OF ALLOTTEES DATED 1STAPRIL, 2006

NAME OF ALLOTTEE	NO. OF SHARES
Shri Anand Prakash Sanghi 4-3-352, Bank Street, Hyderabad	5,31,250
Smt.Anjana Sanghi 4-3-352, Bank Street, Hyderabad	5,31,250
Mr.Amit Sanghi 4-3-352, Bank Street, Hyderabad	5,31,250
Ms.Swati Sanghi 4-3-352, Bank Street, Hyderabad	5,31,250
Shri. Sudhir Sanghi 4-3-352, Bank Street, Hyderabad	5,31,250
Smt.Usha Sanghi 4-3-352, Bank Street, Hyderabad	5,31,250
Ms.Pooja Sanghi 4-3-352, Bank Street, Hyderabad	5,31,250
Mr.Siddarth Sanghi 4-3-352, Bank Street, Hyderabad	5,31,250
Shri. Ravi Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511	5,31,250



4-3-352, Bank Street, Hyderabad	
Smt. Anita Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	5,31,250
Mr.Aditya Sanghi Sanghinagar' PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	5,31,250
Mr.Alok Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	5,31,250
Shri Gireesh Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	5,31,250
Shri Alka Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	5,31,257
Mr.Gaurav Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	5,31,250
Mr.Ashish Sanghi Sanghinagar PO Hayatnagar Mandal, Ranga Reddy District, AP-501 511 4-3-352, Bank Street, Hyderabad	5,31,250
TOTAL SHARES	84,99,937

It is duly digitally signed by the Managing Director, Girish Sanghi (2nd Respondent), by declaring that he has been duly authorized by the Board of Director's Resolution, dated 1stApril,2006 and further certified by Mr.Jayant Palnit Kar, Chartered Account/Company Secretary. The declaration given in the said column is as follows:

“ Declaration:

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. I have been authorized by the Board of Directors resolutions' dated 01/04/2006.



To be digitally signed by

Managing Director or Director or Manager of
the Company

Gireesh
Kumkar
Sanghi

Certificate:

It is hereby certified that I have verified the above

of M/s

and found them to be true and correct.

Chartered Accountant or Cost Accountant or
Company Secretary (in whole-time practice)

JAYANT
PALNIT
KAR

The above list consisting of Sixteen total members, in which all the Petitioners and the Girish Sanghi (2nd Respondent), Gaurav Sanghi (3rd Respondent), Alka Sanghi (4th Respondent) & Ashish Sanghi (9th Respondent) are allotted 5,31,250 (except Alok Singh , who was allotted 5,31,187) shares each and the total number of shares allotted are 84,99,937 for total amount of Rs. 84,999,370/- @ Rs. 10 per shares and this was paid.

14. In the light of above two Forms filed, it is relevant to examine Form No.23 pursuant to section 192 of Companies Act, 1956 filed by the 2nd Respondent along with minutes of Extraordinary General Meeting (EGM) of the Company held on 19th March, 2007. It is relevant to extract Paras-5 & 6 minutes of said meeting”:

“5.THE FACTUAL SHARE ALLOTMENT LIST OF 01-03-1998 ARE AS UNDER:

“RESOLVED THAT statement showing allotment of 20,00,000 Equity Shares of Rs.10/- each to the names, addresses and number of shares allotted pursuant to the Board Resolution dated 1st March, 1998, which was E-filed



along with Form No.2, without the proper authorization of the Board by misuse of the Digital Signature of the Chairman & Managing Director on 5th March, 2007 be and is hereby not recognized by the Company/Board and the factual allotments are as under:"

S.No	Name & Address of Allottee	Date of Allotment	No.of Equity Shares Allotted	Amount (Rs)
1	Gireesh Kumar Sanghi 1-144, P.O.Sanghi Nagar, Ranga Reddy Dist Andhra Pradesh-501 501	01-03-1998	10,00,000	1,00,00,000
2	Smt.Alka Sanghi 1-144, P.O.Sanghi Nagar, Ranga Reddy Dist Andhra Pradesh-501 501	01-03-1998	5,00,000	50,00,000
3	Gaurav Sanghi 1-144, P.O.Sanghi Nagar, Ranga Reddy Dist Andhra Pradesh-501 501	01-03-1998	5,00,000	50,00,000
	TOTAL		20,00,000	2,00,00,000

"6. NON RECOGNITION OF RETURN OF ALLOTMENT FILED ON 05-03-2007 WITH SHARE ALLOTMENT LIST DATED 01.04.2006:

"RESOLVED THAT statement showing allotment of 84,99,937 Equity Shares of Rs.10/- each to the names, addresses and number of shares allotted pursuant to the Board Resolution dated 1st April, 2006, which was E-filed along with Form No.2, without the proper authorization of the Board, by misuse of the Digital Signature of the



Chairman & Managing Director on 5th March, 2007 be and is hereby not recognized and the factual allotment made by the Board of Directors vide resolution dated 22-04-2006 are as under:"

S.No	Name & Address of Allottee	Date of Allotment	No.of Equity Shares Allotted	Amount (Rs)
1	Gireesh Kumar Sanghi 1-144, P.O.Sanghi Nagar, Ranga Reddy Dist Andhra Pradesh-501 501	22-04-2006	14,99,937	1,49,99,937
2	Smt.Alka Sanghi 1-144, P.O.Sanghi Nagar, Ranga Reddy Dist Andhra Pradesh-501 501	22-04-2006	30,00,000	3,00,00,000
3	Gaurav Sanghi 1-144, P.O.Sanghi Nagar, Ranga Reddy Dist Andhra Pradesh-501 501	22-04-2006	30,00,000	3,00,00,000
4	Ms.Aarti Sanghi 1-144, P.O.Sanghi Nagar, Ranga Reddy Dist Andhra Pradesh-501 501	22-04-2006	10,00,000	1,00,00,000
	TOTAL		84,99,937	8,49,99,370



The list of shares as on 15.02.2007 is also filed it is consisting of the following table below:

S.No	Name & Address of Allottee	Number of Shares held of Rs.10/- each fully paid up	Date of Allotment/Transfer
1	Ram Sharan Sanghi	9	29-09-1994
2	Smt.Kamala Rani Sanghi	9	29-09-1994
3	Sudhir Sanghi	9	29-09-1994

4	Smt.Usha Sanghi	9	29-09-1994
5	Ravi Sanghi	9	29-09-1994
6	Gireesh Kumar Sanghi	9 10,00,000 14,99,937	29-09-1994 01-03-1998 22-04-2006
7	Smt. Alka Sanghi	9 5,00,000 30,00,000	29-09-1994 01-03-1998 22-04-2006
8	Gaurav Sanghi	5,00,000 30,00,000	01-03-1998 22-04-2006
9	Ms.Aarti Sanghi	10,00,000	22-04-2006
	TOTAL	105,00,000	

15. As per the reply of second Respondent dated 10th July, 2017, it is not the case of second Respondent that he has lost his digital signature or he has lodged any complaint with any authorities for misuse of his signature. But his only untenable contention is that he has given his digital signature to his elder brother, who has mis-used the signature. In the absence of any proof that his signature is misused by his elder brother, it is not at all tenable of such allegation. Moreover, all the allotments made subsequently are exclusively to family of second Respondent and few others. The way the second Respondent allotted all shares to his family members and his group by non-recognizing the shares already to all the members of Sanghi family, including second Respondent and his group clearly shows that the allegation that he has given his digital signature to his elder brother, who has mis-used it, is totally false and baseless and it is hereby rejected out rightly having no iota of truth in it.



16. Since the main issue raised by the second Respondent is about mis-use of his digital signature, it is necessary to advert to various provisions with regard to issue of Digital signature, and its custody, its legal validity under the

Information and Technology Act, 2000. And the relevant provisions of the Act are extracted below:

“section 3. Authentication of electronic records:-

- (1) *subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.*
- (2) *The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.*

Explanation: *For the purpose of this sub-section, “hash function” means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as “hash result” such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible-*

- (a) *to derive or reconstruct the original electronic record from the hash result produced by the algorithm;*
- (b) *that two electronic records can produce the same hash result using the algorithm.*
- (3) *Any person by the use of a public key of the subscriber can verify the electronic record.*
- (4) *The private key and the public key are unique to the subscriber and constitute a functioning key pair.*

[3A.Electronic Signature:-

- (1) *Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which-*



- (a) is considered reliable; and
- (b) may be specified in the Second Schedule.
- (2) For the purpose of this section any electronic signature or electronic authentication technique shall be considered reliable if-
- (a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and to no other person;
- (b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;
- (c) any alteration to the electronic signature made after affixing such signature is detectable;
- (d) any alteration to the information made after its authentication by electronic signature is detectable; and
- (e) it fulfils such other conditions which may be prescribed.
- (3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.
- (4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:



Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

- (5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.]

Section-4: Legal recognition of electronic records:-

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

- (a) rendered or made available in an electronic form; and
 (b) accessible so as to be usable for a subsequent reference.

COMMENTS

If any information or matter is rendered or made available in an electronic form, and accessible so as to be usable for a subsequent reference, shall be deemed to have satisfied the requirement of the law which provides that information or any other matter shall be in writing or in the typewritten form.

Section 5: Legal recognition of [electronic signature]:-

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of [electronic signature] affixed in such manner as may be prescribed by the Central Government.



Explanation:- For the purposes of this section, “signed”, with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression “signature” shall be construed accordingly.

COMMENTS:

If any information or any other matter is required by law to be authenticated by affixing the signature, then such requirement shall be deemed to have been satisfied if such information or matter is authenticated by means of electronic signature affixed in the prescribed manner.

Section-6:Use of electronic records and [electronic signatures] in Government and its agencies:-

- (1) Where any law provides for
 - (a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
 - (b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
 - (c) the receipt or payment of money in a particular manner, then, notwithstanding anything contained in other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.
- (2) The appropriate Government may, for the purpose of sub-section (1), by rules, prescribe-



- (a) *the manner and format in which such electronic records shall be filed, created or issued;*
- (b) *the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).*

Section 4 to 42 deals with dues of subscribers and these sections extracted below:

“Section-40: Generating key pair:-

*Where any Digital Signature Certificate, the public key of which corresponds to the private key of that subscriber which is to be listed in the Digital Signature Certificate has been accepted by a subscriber, [***] the subscriber shall generate [that key] pair by applying the security procedure.*

Section 40A: Duties of subscriber of Electronic Signature Certificate:-

In respect of Electronic Signature Certificate the subscriber shall perform such duties as may be prescribed
Section- 41: Acceptance of Digital Signature Certificate:-

- (1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he published or authorizes the publication of a Digital Signature Certificate-
 - (a) to one or more persons;
 - (b) in a repository; or

Otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

- (2) *By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that-*



- (a) *the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;*
- (b) *all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;*
- (c) *all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.*

Section-42: Control of private key:-

- (1) *Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure [***]*
- (2) *If the private key corresponding to the public key listed in the Digital Signature Certificate has been compromised, then, the subscriber shall communicate the same without any delay to the Certifying Authority that the private key has been compromised.”*

The certifying authority are has issue a Digital Signature Certificate as also empowering to suspend the Digital Signature Certificate upon on receipt of request to that effect from the subscriber listed in the Digital Signature Certificate or if it is of opinion that Digital Signature Certificate should be suspended to the public interest Section 37 extract below:



Section 37: Suspension of Digital Signature Certificate:-

- (1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate.
- (a) on receipt of a request to that effect from
- i) the subscriber listed in the Digital Signature Certificate; or
- ii) any person duly authorized to act on behalf of that subscriber;
- (b) if it is of opinion that he Digital Signature Certificate should be suspended in public interest.
- (2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.
- (3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.



- 17 In the light of above provisions of the IT Act, it is to be examined whether the allegations made by the 2nd Respondent that the Digital Signature was misused by the Petitioners is tenable or not. Admittedly, the digital signature of the 2nd Respondent was also certified by the Chartered Accountant/Company Secretary. It is not the case of the 2nd Respondent that he has made any complaint about the misuse of his digital signature. On the contrary, as per the provisions of Information and Technology Act, 2000 as extracted above, it should be kept under his custody and control with relevant keys and if any mis-use or loss of it, he has to report to Competent authority for suspension of it.

Moreover, the Chartered Accountant/Company Secretary , who has attested did not choose to file any counter or filed any document on his behalf to contend that he was not witness to the proceedings filed along with the two Form -2 filed on 06.03.2007. It is also to be noted that the main company petition was filed in the year 2008, no reply is filed on behalf of Respondents except the second Respondent, who has filed his belatedly on 10th January, 2017.

The second Respondent in his reply only baldly denied by alleging that his digital signature was misused by his elder brother. It is to be noted that it is not even the case of the 2nd Respondent that the 1st Petitioner has taken his digital signature unauthorizedly but only mere allegation is that his digital signature was misused. Once digital signature was properly exercised by subscriber, which is duly certified by the Chartered Accountant/Company Secretary, it is deemed to be conclusively proved that he has signed through his digital signature. And the subsequent allegations are not at all tenable. It is not possible for the Tribunal to enter into roving enquiry about baseless allegations of misuse without producing any prima facie evidence to that extent. Moreover, subsequent acts of the second Respondent in allotting all shares of the Respondent No. 1 to his family members and his group by totally excluding the Petitioners group, who are members of Sanghi family clearly shows the malafide intention of second Respondent and it is nothing but clear acts of oppression and mismanagement on the part of Respondents . As stated supra, the Respondent No1. Company was purchased by the family of "Sanghi" and the Petitioner is one of the family members of Sanghi and the evidence also clearly shows that it is not exclusive property of the second Respondent; it is the joint family property of



Sanghi, and it has been usurped by second Respondent as rightly contended by the Petitioners, after flouting all norms of law. Unfortunately, the first Petitioner, who is the elder brother of the second Respondent, died on 02.03.2015, while the present case is pending. However, the second Respondent is bent upon to prosecute the present case

18. It is not in dispute that no notice has been given to the Petitioners, who are holding substantial shares in the Company as mentioned above. Principles of natural justice demands that a notice should be given even to any person, whose rights, accrued rightly or wrongly, are going to be deprived. Even as per the notice dated 15.02.2007, it is admitted that the allotment of shares were made on 01.03.1998 and 01.04.06. As stated by the learned Senior counsel for the Petitioner, there is no provision under law or under the Memorandum and Articles of Association of Respondent No. 1 Company to de-recognize the shares, once allotted and it amounts to reduction of share capital, which require to follow a lengthy procedure. The contention of the 2nd Respondent that his Digital Signature was misused by the 1st Petitioner is not at all tenable in the light of the Digital Signature held by the 2nd Respondent is still under the custody of 2nd Respondent, who has admittedly transacted subsequent transactions with same Digital Signature. As stated supra, if any deviation of use of digital signature takes place, it is the duty of subscriber to bring it to notice of concerned authorities for appropriate action. The second Petitioner has admittedly not followed the procedure prescribed under Information and Technology Act, 2000, and also registered FIR with the police authorities for the alleged mis-use of his digital signature. Therefore, it is to be held that the notice dated



15.02.2007, which proposed EGM to be held on 19th March, 2007 is liable to be declared as illegal as it the contravene provisions of Memorandum and Articles of Association of the Respondent Company apart from the provisions of the Companies Act, 1956/2013. The shares allotted on 01.03.1998 and 01.04.2006 to the Petitioners as well as the 2nd Respondent and his group of people are declared to be legally valid and they cannot be de-recognized subsequently.

19. The Certifying Authority is also empowered to suspend the Digital Signature Certificate upon a request to that has been received as per section 42 of the IT Act 2000. Until, any communication is received from the subscriber about misuse/compromise etc of digital signature, it is subscriber, who is liable. It is also stated in the section that if the private key corresponding to the public key is compromised, the subscriber should communicate it without any delay to the Certifying Authority.

Section 42 is relevant in this regard, which is extracted below for ready reference:

“Section 42: Control of private key:

- (1) *Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure [***].*
- (2) *If the private key corresponding to the public key listed in the Digital Signature Certificate has been compromised, then, the subscriber shall communicate the same without any delay to the Certifying Authority in such manner as may be specified by the regulations.*



Explanation: For the removal of doubts, it is hereby declared that the subscriber shall be liable till he has informed the Certifying Authority that the private key has been compromised.

Penal provisions is also provided for any fraudulent or unlawful use of Electronic Signature Certificate u/s 74 of the Act, which is extracted below for ready reference::

“Section 74:Publication of fraudulent purpose:- Whoever knowingly creates, publishes or otherwise makes available a [Electronic Signature] Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Comments:

If any person knowingly creates, publishes or otherwise makes available an Electronic Signature Certificate for any fraudulent or unlawful purpose, he shall be punished with imprisonment up to two years, or with fine up to one lakh rupees, or with both.”

Rule 28 & 29 of Information and Technology (Certifying Authorities) Rules, 2000 deals with compromising and revoked of Digital Signature Certificate.

Rules 28 & 29 reads as under:

“Rule-28: Compromise of Digital Signature Certificate: Digital Signature Certificate in operational use that become compromised shall be revoked in accordance with the procedure defined in the Certification Practice Statement of Certifying Authority.

Explanation:Digital Signature Certificate shall,-



- (a) be deemed to be compromised where the integrity of-
- i) the private key associated with the Digital Signature Certificate is in doubt;
 - ii) the Digital Signature Certificate owner is in doubt, as to the use, or attempted use of his key pairs, or otherwise, for malicious or unlawful purposes;
- (b) remain in the compromised state for only such time as it takes to arrange for revocation.

Rule 29: Revocation of Digital Signature Certificate:- (1)
Digital Signature Certificate shall be revoked and become invalid for any trusted use, where-

- (a) there is a compromise of the Digital Signature Certificate owner's private key;
 - (b) there is a misuse of the Digital Signature Certificate;
 - (c) there is a misrepresentation or errors in the Digital Signature Certificate;
 - (d) the Digital Signature Certificate is no longer required.
- (3) The revoked Digital Signature Certificate shall be added to the Certificate Revocation List (CRL)

20. It is not in dispute that the 2nd Respondent has obtained the Digital Signature Certificate in question from the Competent Authority, and it is not his case that his Digital Signature Certificate is tampered with by anybody. But his only untenable allegation is that he has given his Digital Signature to his elder brother (the 1st Petitioner) and he had exercised it un-authorisedly by allotting and uploading 2 Form No 2 by allotting shares to all family members of Sanghi family including the 2nd Respondent and his family members. The contentions of second Respondent that the impugned allotments dated 1.3.1998 and 1.4.2006 are



uploaded in the year 2007, i.e after expiry of 30 days' time granted under the law is not correct and not tenable. As per law, no additional fee is required to be paid if appropriate forms uploaded within 30 days but they can be uploaded subsequently by paying prescribed fee. We have also checked up with records of Registrar of Company, Hyderabad with regard to two FORM 2s. The first FORM 2 (page No. 51 to 54 of CP) uploaded SRNo (Service Request No.). A11143922 dated 06.03.2007, by paying fee for Form PAS-3 for an amount of Rs. 5000/- , which was paid on 06.03.2007 through Punjab National Bank. The other FORM 2 (Return of Allotment) dated 01.04.2006 (page 55-58 of CP) was uploaded vide SRN A11144185, dated 06.03.2007 by duly paying for Form PAS-3 by remitting an amount of Rs. 3500/- on 06.03.2007 through Punjab National Bank and same was also duly certified by the Jayant Palnit Kar, Chartered Accountant/Company Secretary as extracted supra. In addition, there are no provisions that exists either in the Companies Act or in the Memorandum and Articles of Association of R1 Company (AGA Publication) to cancel allotted shares. It is also not in dispute that there was no notice issued to the Petitioners for the subsequent EGMs held from 19th March, 2007 onwards, which is not only in violation of principles of natural justice but it is also against the Companies Act, 1956/2013 and the provisions of the Memorandum and Articles of Association of R1 Company (AGA Publications Limited). Therefore, all the subsequent meetings held from 19.03.2007 onwards and decisions taken during those meetings are declared to be illegal and no rights would accrue to the Respondents by virtue of those allotments.



21. The contention of second Respondent that the Petitioners do not hold any shares at all in the Respondent No. 1 Company is not all tenable, and it is hereby rejected. Since, it is already held in this judgment that the allotments made on 01.03.98 and 01.04.2006 are declared to be legal and they are made in accordance with law, the Company petition is maintainable. Further, as per list of list of shareholders as on 15.02.2007 signed by the second Respondent also recognize that Petitioner No. 2 & 7 are holding 9 shares each of original 63 shares.

22. As extracted supra, the Information Technology Act, 2000 and the Rules made there-under have provided enough safeguards and security in order to prevent misuse, tamper /fraudulently use etc of Digital Signature. Since the second Respondent has admittedly in possession of his Digital Signature with all keys and transacting with the same for subsequent transactions, which are convenient to him and his own family members, the allegation of its misuse by his elder brother namely Late Shri Anand Prakash Sanghi (the first Petitioner herein) is totally baseless and un-tenable and the same is hereby out rightly rejected. And the subsequent transactions especially with regard to impugned allotment of shares to the second Petitioner, his own family members and his group are declared as violation of Memorandum and Articles of Association of Respondent No. 1 Company. All these acts constitute acts of oppression and mismanagement as contended by the Petitioners on the part of Respondents. Further, as stated supra, several allegations of Acts of Oppression & Mismanagement made in the petition remain un-disputed/un-controverted till date, except a bald reply counter/written submission dated 10th January, 2017 for the case filed in the year 2008. Therefore,



it is to be held that the affairs of Respondent No. 1 Company are being conducted in a manner prejudicial to public interest and in a manner oppressive to the Petitioners and that to wind up the Company would un-fairly prejudice to the Petitioners, other stake holders and the Company in general and thus it is a fit case to dispose of the case with necessary directions so as to put an end to the affairs of Respondent No. 1 Company since the Respondent No. 1 Company led by second Respondent continues to act contrary to the interest of it and wanted it to be litigant Company rather than working Company.

23. However, the allegations made by the Petitioners with regard to affairs of Superior Printers(Respondent No. 6) is beyond the scope of litigation, as rightly contended by the second Respondent in his Counter/written submissions dated 10th January 2017. The second Respondent has every right to continue as Managing Director of Respondent No. 1 Company and to run its affairs in accordance with provisions of Company law and Memorandum and Articles of Association of the Company.
24. In order to avoid multiplicity of litigation and as there would not be change in the nature of pleadings of the Company petition, CA No. 131 of 2017 filed by Ravi Sanghi and 3 others by seeking to implead them as Petitioners No. 8 to 11 deserves to be allowed and thus their names are arrayed as such.
- 25 Therefore, I am of the considered opinion that it is a fit to exercise powers conferred on this Tribunal under sections 397 and 398, 402, and 406 and read with Schedule 11 of Companies Act, 1956 R/w Sections 241/242 of Companies Act, 2013.



26. For the aforesaid reasons, the Company Petition bearing CP No.71 of 2008 (TP No.29/HDB/2016) deserves to be allowed. Accordingly, the Company Petition is allowed with the following directions.

- 1) The resolutions alleged to have been passed at the EGMs held on 19.03.2007 for non-recognizing the allotment of 20,00,000 shares that were allotted by the first Respondent Company on 01.03.1998 is hereby set aside with a consequential direction to the Registrar of Companies, Ministry of Corporate Affairs, Hyderabad ,Telangana not to take on record the Form No.23 filed by the 2nd Respondent in this regard.
- 2) The resolutions alleged to have been passed at the EGM, alleged to have been held on 19/03/2007 for non-recognizing the allotment of 84,99,937 shares that were allotted by the first Respondent Company on 01/04/2006 is hereby set aside with a consequential direction to the Registrar of Companies, Ministry of Corporate Affairs, Hyderabad, Telangana, not to take on record the Form 23 filed by the Second Respondent in this regard;
- 3) The allotment of 45,00,000 shares and 84,99,937 shares that were alleged to have been allotted to the Respondent group on 19/03/2007 and 22/04/2006 respectively are hereby set aside with consequential direction to the Registrar of Companies, Ministry of Corporate Affairs, Hyderabad(Telangana) not to take on record the Forms 2 filed by the second Respondent in this regard;
- 4) Hereby directed the first Respondent Company to rectify the Register of Members reinstating the names of the Petitioners and to delete the names of the



Respondent group with respect to the shares alleged to have been allotted on 22/04/2006 and 19/03/2007;

- 5) The Registrar of Companies, Ministry of Corporate Affairs, Hyderabad, is hereby directed to take appropriate action(s) to carry out above directions immediately, after receipt of copy of this order and directed the Registry of NCLT to mark a copy of this order to the Registrar of Companies, Hyderabad.
- 6) The other reliefs, which are prayed in the Company petition, are hereby rejected as Petitioners are not entitled for those reliefs.
- 7) The Respondent No.1 Company and 2nd Respondent are hereby directed to follow all the extant provisions of Companies Act, 2013 and Memorandum and Articles of Association of the Company and also duly follow the Principles of Natural Justice in running the affairs of the Respondent No.1 Company without any deviation.
- 8) No order as to costs.



sd/-
RAJESWARA RAO VITTANALA

Member (Judicial)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

for Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER...CP.NB.714/2017(P.N.O.29/HDB)/2016
निर्णय का तारीख
DATE OF JUDGEMENT...29.9.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON...9.10.2017