

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP No 38/59 & 241/HDB/2017
U/s 59 & 241 of the Companies Act, 2013

In the matter of

Mrs. Mulagaleti Nagalakshmi
D/o Veluri Venkata Durgaprasadarao
Aged 41 years
H.No. 18-107/A, Kamalanagar
Chaitanyapuri
Hyderabad - 500060

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

... Petitioner

Versus

1. Amar Gady
Director, Global Eco Controls Pvt. Limited
H.No. 3-37-108, P.No.13 Indrapuri Railway Colony
West Marredpally
Secunderabad - 500026
2. Neelima Gady
D/o Shri Jeevan kumar Mummadi
Plot No.13, West Marredpally
Hyderabad - 500026
3. Global Eco Controls Private Limited
Plot No. 13, 1st Floor, Indrapuri Railway Colony
West Marredpally
Secunderabad, TG -500026

...Respondents

Order pronounced on 16th October, 2017

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)



Parties / Counsels Present

For the Petitioner: Shri S.Radha Krishna &
A.Ngaraj Kumar

For the Respondent: Shri DVAS Prasad,
Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company petition bearing CP No.38/59 & 241/HDB/2017 is filed by Mulagaleti Nagalakshmi (Petitioner) under section 59 & 241 of the Companies Act, 2013, by seeking the following reliefs:-

(a) Direct R-3 for rectification of the Register of Members of the Company and cancel the allotments or transfer of shares if any made by the Respondents after incorporation of the Company after considering the subscription of Subscribed Equity Share Capital of the Company pursuant to Section 59 of the Companies Act, 2013.

(b) Direct the Registrar of Companies, Hyderabad to initiate prosecution under Section 447 and 448 of the Companies Act, 2013, against Respondent for making false statement in the annual returns, and fabricated document/forms filed with the Registrar of Companies of behalf of R-3 Company under the provisions of Companies Act, 2013.



- (c) Set aside the appointment of the Auditors and his subsequent reappointments and to direct for the review on the Audits conducted from incorporation date to till date or for the period as deems fit by this Tribunal.
- (d) To direct the Central Government/Ministry of Corporate Affairs/Registrar of Companies, Hyderabad for conducting detailed investigation on the affairs of R-3 Company since incorporation under Section 210(2) of the Companies Act, 2013.
- (e) Set aside all the appointments and removal of the Directors of the Company and reconstitute the Board of Directors by convening a General Meeting.
- (f) Direct the Respondents not to interfere with the assets of R-3 Company.
- (g) Direct the Respondents to transfer the amount of Rs. 2 crores to Company Account which was illegally diverted to his, friends and relatives account, etc



2. The Brief facts, leading to filing of present petition, in brief, are as follows:-

- (1) Global Eco Controls Private Limited (hereinafter referred to as the "Company") was originally incorporated as Private Limited Company under the name of Global Eco Controls Private Limited on 31.12.2014. Its Registered Office was subsequently shifted from Level 1, Midtown plaza, Road No.1, Banjara Hills, Hyderabad -

500032, Plaza Road No.1 Banjara Hills, Hyderabad - 500032, Telangana, India to Plot No.13, 1st Floor, Indrapuri Railway Colony, West Marredpally, Secunderabad, TG 500026, vide Form INC 22 dated 9th November 2015 without proper approval from the Board. The Petitioner and Mr. Amar Gady, Respondent No.1 are the first the Directors of the Company. The Authorised share capital of the Company is 10,000 Equity shares of Rs.10 each aggregating to Rs, 1,00,000/. As per the Memorandum of Association of the Company G. Amar and V. Nagalakshmi are subscribers of 5,000 equity shares of Rs.10/- each.

- (2) The Petitioner has received notice on 28.06.2016 by proposing to convene Extraordinary General Meeting of the Company scheduled to be held on 18.07.2016 at 10.30 hrs at the registered office of the Company for alteration of the Articles of Association of the Company and removal of her as Director.
- (3) On coming to know about the proposed meeting, the Petitioner inspected the records of the Company, and came to know that there are several violations committed by the Company. The Petitioner made serious complaint against Respondent No.1 to the RoC, A.P on 14.07.2016 for misusing the Company funds. It is alleged that the Respondent No.3 has availed loan to the tune of Rs. 2 crores from Andhra Bank, BHEL, Ramachandrapuram Branch, and Hyderabad on 27.03.2016. On the very next day, Respondent



No.1 started misusing Company funds by transferring funds to R.No.2 (who is the wife) account, relatives, friends and to his personal account. When the Respondent No.1 started black mailing the Petitioner, she filed a complaint against him and the same is pending before Hon'ble X Addl Chief Magistrate at Secunderabad.

(4) The Petitioner has also filed complaint with RoC, AP. It is contended that the Petitioner has not signed either digitally or physically on any paper, e-form or any resolutions of the Company. Every digital signature of Petitioner was un-authorisedly possessed and used and her signature was forged /scanned and used for e-filing:-

(i) Form No. INC 21 dated 6.1.2015

(ii) Directors Report for the year ending 31.03.2015 on second page.

(iii) Form No. MGT 14 and form No. DIR 12 for change in the designation of Mr. Amar Gady as Managing Director of the Company, wherein the Petitioner's Digital signature was affixed without the knowledge of the Petitioner and authorisation and the attachments are not duly signed by the Petitioner.

(5) The Registered office of the Company was shifted without the knowledge or information of the Petitioner from Level 1, Midtown Plaza, Road No.1, Banjara Hills, Hyderabad - 500032, Telangana India to plot No.13, 1st Floor, Indrapuri Railway Colony, West Marredpally, Secunderabad, TG 500026 (which is his own premises) vide Form IN 22 dated 9th November 2015.



(6) It is alleged that the EGM was held on 15.12.2015 without any notice to the Petitioner, and there was no proper quorum for the Board meeting and the EGM unilaterally increased the authorised share capital of Respondent No. 3 Company from Rs. 1 lakh to Rs. 50 lakhs. There are only two Directors and two shareholders (petitioner and respondent No. 1) holding 100% paid up share capital of the Company. The Respondent No.1 had allotted 4,90,000 Equity shares of Rs. 10/- aggregating to Rs.49,00,000/- at the alleged meeting held on 29.01.2016 to the following persons:-

- (i) Mr. Amar Gady: 382,500 equity shares
- (ii) Ms. Nagalakshmi M: 82,500 equity shares
- (iii) Ms. Vijay Lakshmi N: 12,500 Equity Shares
- (iv) Mr. P. Rajender Reddy: 12,500 Equity shares

(7) Again the designation of the Respondent No. 1 was changed from Director to Managing Director of the Company. It is alleged that P.R. Reddy who is an unknown person to the Petitioner was made member of the Company, and he has issued special notice convening EGM on 18.07.2016 for amending Articles of Association of the Company. It is alleged that the Respondent No.1 has committed several violations of Sections 11(1)(a), 12(2) & 4, 12(3)(a), 13(1), 39(4), 42(9), 64, 92(1), 92(3), 96, 100, 101, 102, 103, 104, 118, 129, 134, 139, 161, 169, 170(2), 173, 174, 241, 447, 448, 449, 450 and 451 of the Companies Act as well as for mismanagement of funds, fabrication of documents and produced the same



before the authorities as genuine, violation of procedure etc.

(8) Therefore, the present Company Petition is filed seeking the reliefs as extracted supra.

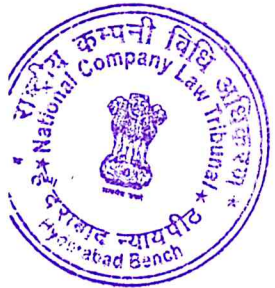
3. The Respondents No. 1 to 3 have filed has filed a detailed reply dated 19.04.2017. The following are the main contentions raised by them:-

(1) The Petitioner has not made out any case either under Section 59 and/or 241 of the Companies Act, 2013. The Petitioner raised no objection to the issue and allotment of shares. The Petition also suffers for non-joinder of necessary parties i.e. the shareholders to whom shares have been allotted, which are sought to be set aside.

(2) The Petitioner has invested only Rs. 50,000/- towards capital and she got back 25 times more than that from the Company under various accounts and still, she is aspiring getting more undue benefits. The Petitioner who is a novice to the business of assembling, installing, designing and marketing security and fire safety solutions of the Company, joined with Mr. Amar Gady, Respondent No. 1 with a mischievous intention to assert pressure on him and to get more from the Company. The first Respondent having known her late husband, believed her and out of sympathy, she was admitted into the Company as an associate to help her. However, the Petitioner was trying to black mail instead of others, who have shown lot of inclination to join the Company



- (3) The Petitioner stated that a notice was received from the shareholder to convene EGM on 18.07.2016. The notice of the shareholder requisitioning the above meeting was also duly forwarded to the Petitioner and notice of EGM was also sent to the Petitioner by Registered Post. Therefore, the Petitioner was duly informed about the above meeting and the decision to remove her was taken in accordance with law.
- (4) Basing on the complaint given to the Registrar of Companies, on 21.07.2016 made by the Petitioner, the Registrar has made an inquiry of the allegations, and asked both the Petitioner and the Respondent to produce all the relevant documents, and after scrutinizing all the documents, then only the relevant documents were registered. It is denied that the allegation of forgery or using her signature by others. As long as she is in possession of her digital signature, the question of forgery or use of her digital signature by others will not arise. The affixation of digital signature of the Petitioner on some documents was with her consent and by her authority. It is also denied forgery of her signature on INC 21, Directors report and MGT-14.
- (5) It is stated that Mr. Rajender Reddy and Mrs. Vijayalakshmi have invested Rs. 2,50,000/- in the capital of the Company. Mrs. Vijaylakshmi has given her precious properties valued at Rs.4 crore as security to secure the loan of Rs. 2 crore sanctioned by Andhra Bank to the Company. It is



stated that after following due process of law, shares were allotted to the Petitioner, Respondent No.1 and 02 others on 29.01.2016, out of which 82,500 shares of Rs.10/- each were also allotted to the Petitioner even though she did not bring in any money for the above allotments but they are allotted on the promise that she would in due course return the monies. The Petitioner was a party to the meeting but as usual she did not sign the Register.

- (6) It is denied that there is no Board meeting held. The Petitioner has signed some Resolutions and she is one of the operators of the bank account of the company and she could not have operated the account without there being proper board resolution. It is stated that shifting of the registered office of the Company, increase of authorised share capital, allotment of shares, operating of bank accounts, burrowing of funds etc was with the consent of the Petitioner and she was very much present at the relevant meetings of the Board and members. However, for the reasons best known to her, pleaded ignorance of the above.

- (7) It is also denied the allegation that the designation to the Managing Director was changed illegally. It is stated that there is no illegality in the appointment of additional director in the board meeting held on 01.06.2016. The Company is a closely held private limited company and it runs on mutual trust and the Petitioner herself has breached the same and making baseless



allegations taking advantage of some procedural issues when things did not suit her convenience and for selfish interest. Shri P.R. Reddy is known to the Petitioner, who is a relative of Smt Vijaylakshmi.

(8) It is stated that the copy of the special notice received from a shareholder seeking to move resolution for removal of the Petitioner was sent to the Petitioner by way of attachment to the mail sent to her on 27.06.2016 apart from it a physical copy was also sent. She is well aware of the meeting and the allegation that she came to know about said EGM only on inspection of the record of the Company on the website of Registrar of Company is totally false and denied. Therefore the Petition is liable to be dismissed.

4. I have heard Shri S. Radhakrishna, Learned PCS along with Shri A. Nagaraj Kumar, and Learned Counsel for the Petitioner, and Shri D.V.A.S. Ravi Prasad, Learned Counsel for the Respondent. I have also perused the pleadings of both the parties along with extant provisions of the Companies Act, 2013.
5. The case was initially listed for admission on 03.04.2017, and subsequently posted to various dates viz, 20.04.2017, 24.04.2017, 11.05.2017, 23.06.2017, 28.06.2017 and reserved for orders on 18.07.2017. The case was adjourned at the request of both the parties on the above dates in order to complete pleadings of parties.
6. In the light of pleadings of both the parties, the following issues arise for consideration by the Tribunal.



- (a) Whether the Company Petition is maintainable or not for lack of clarity in the reliefs asked for;
 - (b) Whether the Petitioner being a Director till her removal from the Directorship has discharged he fiduciary duties as per Section 166 of the Companies Act, 2013,
 - (c) Whether the removal of the Petitioner is in accordance with the law or not.
 - (d) If so, what is the relief the Petitioner is entitled to.
7. So far as the first issue is concerned, as per the reliefs as mentioned supra did not question any specific order(s)/resolution but it is only general in nature. In order to given any direction, the petition should specifically impugn a particular order/resolution etc so to grant any relief by the Tribunal.
8. Global Eco Controls Private Limited was incorporated as per the Memorandum of Association of the Company, which is filed at page 17-24 of the Company Petition. Shri Amar Gadi (Respondent No. 1) and V. Nagalakshmi, D/o V.V. Durga Prasad Rao (Petitioner) have contributed 5,000 equity Shares of the Company. The Articles of Association has been filed at Page Nos. 25 to 36. As per Article 3, the Company is a Private Company within the meaning/definition of Section 2(68) of the Companies Act, 2013 and the right to transfer of shares of the Company is restricted.
9. So far as the issue of share capital is concerned, it is dealt under Article 4 - 9. As per the Article 4, the authorised share capital of the Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each with powers to increase or reduce or alter the same. As per Article 5, the share in the Capital of the



Company shall be under the control of the Directors, who may issue, allot or otherwise dispose of the same or any of them to such persons, in such proportion and on such terms and conditions and either at premium or at part and at such time as they may from time to time think fit.

10. Alteration of Capital of the Company is dealt under Articles 13-16. As per these Articles, the Directors of the Company, with the sanction of the Company in General Meeting can increase the share capital and other consequential action.
11. The procedure for conducting General Meetings of the Company is enumerated under Articles 22 -27. As per these Articles, notice of 21 days is required to be given to all members of the Company for every General Meeting. Article 23 says notice will be deemed to have been sent if they are correctly addressed and posted to the registered addresses or through electronic mode of the members, who are entitled to receive such notice. As per Article 27, two members personally present shall be quorum.
12. The issue of Board of Directors has been dealt with under Article 28-38. As per Article 28, the number of Directors of the Company shall not be less than two and not more than 15 including the nominated technical or special Directors, additional, alternate and Debenture Directors. As per Article 29, Amar Gady (R-1) and Mulagaleti Nagalakshmi (Petitioner) herein, are the first Directors and they are not required to hold any qualification shares. Original Article 31 (which is altered subsequently) says that the Directors of the Company are not liable to retire by rotation and



they shall hold office until they resign the office on their own accord.

13. The Company issued a notice dated 23.06.2016 by proposing to conduct Extraordinary General Meeting of the Members of the Company to be held on 18.07.2016 by proposing to alter Article 31 of the Articles of Association by deleting the sentence “they shall hold office till they resign the office on their own accord and also to remove the Petitioner from the Directorship of the Company”. The Respondent, while contenting that due notice has been issued to the Petitioner, has also filed proof of notice at page 172 & 173 of the material papers filed along with their reply. At page 172, they have affixed two Registered receipts dated 27.06.2016 addressed to the Petitioner. On page 174, they have enclosed the Xerox copy of acknowledgement showing that the Petitioner has received the notice and the connected papers with regard to the said proposed EGM. The copy of the notice dated 23.06.2016 was also issued by Rajender Reddy to the Petitioner.

14. A serious complaint dated 14.07.2016 made to the Registrar of Companies, against Shri Amar Gady (R.No.1) levelling so many allegations. In this complaint, it is clearly admitted that she has received the notice convening of EGM to be held on 18.07.2016 by inter-alia, proposing to remove her from the Directorship of the Company. She made request to the RoC to protect her interest and investment in the Company by not allowing Amar Gady to convene any such proposed illegal meeting and alter the Articles of Association and remove her from the Company. The



Respondent No.1 has made detailed reply to the Registrar of Companies. After making full investigation into the allegations, the Registrar has registered the documents, investment details of the Respondent No.1, the Petitioner, minutes of the meetings, attendance Register, share details, VAT, CST, ST, TAN etc. Accordingly, EGM as proposed was held on 18.07.2017 and resolution as proposed was passed duly removing the Petitioner as Director of the Company.

15. I have perused all the documents with regard to the removal of the Petitioner as Director of the Company and satisfied that the Company has followed all due process of law for removing the Petitioner from the Directorship. Moreover, the Petitioner failed to discharge her fiduciary duties as a Director, which ultimately led to removing her as Director of the Company in order to run the affairs of the Company in accordance with law.

16. As per the minutes of the Board of Directors meeting held on 29.01.2016 (page 79 of the Counter), the shareholding pattern of the Company are as follows:-

1. Gady Amar	:	3,82,500 shares
2. M. Nagalakshmi	:	82,500 shares
3. N.Vijaya Lakshmi	:	12,500 shares
4. P.Rajender Reddy	:	12,500 shares

As per the minutes of the Board Meeting held on 01.01.2016, sanction was given to the issue of 4,90,000 equity shares of Rs.10/- each by right offer to the equity shareholders as on 15.01.2016 on proportionate basis in the ratio of 49:1 (i.e 49 right shares for every 01 share held in the Company) at par. Accordingly, the



relevant Form was also filed with the Registrar of Companies. The details of the shareholding of the Equity Shares of the Company as on 31.03.2016 is as follows:-

(i) Amar Gady	:	387500
(ii) M. Nagalakshmi	:	87500
(iii) N. Vijaya Lakshmi	:	87500
(iv) P. Rajender Reddy	:	12500
Total	:	500000 shares

17. The allegations and the counter allegations clearly shows that the Petitioner is making so many frivolous and false allegations and also not discharging her duties as Director and shareholder to see the affairs of the Company is conducted in accordance with law. Moreover, all the criminal cases instituted by both the parties also show that instead of approaching this Tribunal, they are resorting to criminal proceedings with regard to the affairs of the Company by branding company affairs as criminal nature of affairs. There is a lot of history between the Petitioner and the Respondent as to how the Company was formed and investment made by the Petitioner in the Company. The Petitioner admittedly, has invested hardly Rs.50, 000/- and she does not have any experience in the field of business for which the company is established. For whatever reasons, the Petitioner is associated with the Company, she was given due shares. However, for reasons best known to her, she has resorted to several criminal proceedings and also lodged complaint with the RoC. Even when the RoC has concluded that the affairs of the Company are being conducted in



accordance with the law. In spite of that, the Petitioner is still bent upon to continue the litigation here and also before Criminal courts as detailed supra. It is to be mentioned here that the petitioner is still a member by holding substantial shares in the Company and in own interest also, the petitioner should cooperate with the Company to carry on its business. While questioning several proceedings, allotment of shares, alteration of shares, early removal of Directorship, she failed to produce any document to substantiate the vague allegation made against Respondent No.1, and even she did not implead the proper and necessary parties and all allegations are bald and baseless and they are liable to be rejected as having no merit.

18. It is not in dispute that the Petitioner was also beneficiary of allotted shares in question made subsequently made by the Company by way of rights issue. However, for reasons best known to her, she wanted to cancel all the allotment of shares, increase of share capital etc. It is to be mentioned here that Principles of Natural Justice demands whenever any action is being challenged to deprive any bodies rights which are already accrued, those persons, who are aggrieved to be made a party to the Petition. The Petitioner has not impleaded aggrieved parties for cancellation of shares allotted in their favour. The Petition is also liable to be dismissed for not impleading proper and necessary parties to the Company Petition.
19. So far as allegation made by the Petitioner with regard to the misuse of digital signature is concerned, it is not



in dispute that she has not made any complaint to the appropriate authority under IT Act to suspend or keep in abeyance all the operation of her digital signature, except making vague complaint to the Police about its misuse. So the contention of the Petitioner that her digital signature is misused cannot be accepted and the same is hereby rejected.

20. It is also to be mentioned here that in pursuant to the letter of sanction issued by Andhra Bank, Ramachandrapuram Branch vide letter No. 0455/52/GECPL/2016/1 dated 28.03.2016, the Petitioner along with Respondent No.1. Managing Director has signed composite agreement dated 30.03.2016. However, she failed to furnish the guarantee as agreed upon as per the agreement.
21. The present Company Petition is filed under Section 59 and 241 of the Companies Act, 2013. The Petitioner has not made out any case and filed under the above Sections so as to interfere in the matter by the Tribunal. As stated supra, the Petitioner herself got so much advantage by altering the share capital and further allotment of shares, though the Respondent made allegation that she did not contribute anything to the Company, and paid no amount for allotment of shares to her in any way etc, cannot be considered in the present Company Petition. And the fact remains, shares have been allotted to the Petitioner by Respondent No.1 and the same is to be declared legal along with shares allotted to others and the Tribunal cannot interfere in the allotment of shares, removal of the Petitioner as Director etc.



22. It is to be mentioned here that the Company Law Board / NCLT is established to resolve the issues amicably without making the business complicated, and the Tribunal can pass appropriate orders under Section 242 only in case of acts of oppression and mismanagement on the part of Respondent. In the instant case, admittedly, there is no case of acts of oppression and mismanagement on the part of the respondents, and the Petitioner herself is a beneficiary of the actions taken by Company, especially in the allotment of shares, payment of many perks to the Petitioner, even though her contribution to the Company is very nominal in comparison to other shareholders of the Company. It is not in good governance of the Company that the Petitioner should resort to approach criminal courts seeking interference in the affairs of the company under the guise of Criminal law. After establishment of NCLT, the jurisdiction of all the courts are ousted, and conferred exclusive jurisdiction on the NCLT and all the issues of the Company are supposed to be resolved through NCLT only. The affairs of the Company cannot be branded as criminal acts and resort to criminal proceedings. The same is not at all warranted in the interest of the Company and its shareholders which includes the petitioner as well. It is high time that the Petitioner should stop all the criminal actions against Respondent No.1 and to cooperate with the Company to run the affairs of the Company in accordance with law for the welfare of the Company in general and shareholders in particular as the petitioner is still holding substantial shares in the Company. Therefore,



the Company petition fails, and it is only liable to be dismissed.

23. In the result, the Company Petition bearing CP 38/59 & 241/HDB/2017 is hereby summarily rejected, with no order as to costs.



RDV
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

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

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *CP No. 38/59, 241/HDB/2*
निर्णय का तारीख
DATE OF JUDGEMENT *16.10.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *18.10.2017*