

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

C.P.No.36/241/HDB/2017
U/s 59, 241 R/w 242, 244
of the Companies Act, 2013

In the matter of:

Mrs. Proddaturi Malalathi,
W/o. P. Gopala Krishna,
Director and Share Holder
R/o. P.No. 8, H.No.4-434, Gopalnagar,
Moula-Ali, Hyderabad-500040.

... Petitioner

Versus

1. M/s. SRP Logistics Private Limited,
Regd. Office: 1-11-242/1, Flat No.304,
3rdFloor, Krishna Residency, Begumpet,
Hyderabad-500016.
2. Mr. Sekhar Pendam,
S/o. P. Narayana,
Plot No. 14, Prasanna Apts., D-5,
Saibaba Colony, Sitarampur, Bowenpally,
Secunderabad-500011.
3. Mrs. Salalitha Parsha,
W/o. Sekhar Pendam,
Flat No. 14, Prasanna Appartments,
Saibaba Colony, Sitarampur, Bowenpally,
Secunderabad-500011.
4. Mr. Mallesham Mekala,
S/o. Laxman,
H.No.1-3-47/1, Shanthi Nagar,
Peddapalli, Karminagar-505172.
5. Mr. Proddaturi Rama Krishna,
P.No:8, H.No.40-434, Gopalnagar,
Moula-Ali, Hyderabad-500040.
6. The Registrar of Companies,
Andhra Pradesh and Telangana, 2nd Floor,
Corporate Bhavan, Near Central Water Board,
Bandlaguda, Nagole, Hyderabad-500 068.

...Respondents



Order pronounced on 19th December, 2017

CORAM:

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

Parties/Counsels Present:

For the Petitioner : Mr. V.Venkata Rami Reddy, Advocate
For the Respondent No. 1 & 2 : Mr. S.Chidambaram, PCS
For the respondent No. 5 : Mrs. C.Shilpa, Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Company Petition bearing CP No. 36/241/HDB/2017 is filed by Mrs. Proddaturi Malathi against M/s. SRP Logistics Private Limited and 5 others, U/s 59 and 241 R/w 242, 244 of the Companies Act, 2013, by seeking the following reliefs:
 - a. To declare the impugned transfer of shares from Mr. Proddaturi Rama Krishna shown in the Annual Return filed for the year 2006 as null and void.
 - b. To declare the impugned Allotment of shares made on 30.09.2015 and 26.11.2016 as null and void.
 - c. To declare the impugned Board Meeting held on 30.09.2015 as null and void.
 - d. To declare the impugned Board Meeting held on 31.10.2016 as null and void.
 - e. To declare the impugned Extra-ordinary General Meeting held on 26.11.2016 as null and void.
 - f. To declare the impugned Board Meeting held on 26.11.2016 as null and void.
 - g. To declare the impugned appointment of Mr. Mallesham Mekala as Additional Director as null and void.



- h. To direct the Respondents 2, 3 and 4 to sell their shares to the Petitioner by fixing a fair value by appointing a valuer.
- i. To declare Annual Return filed for the period ended 31.03.2016 as null and void.

2. Brief facts, leading to the filing present petition, which are relevant to the issue in question, are as follows:

- 1) **M/s. SRP LOGISTICS PRIVATE LIMITED** (hereinafter referred to as the “Company”) was Incorporated as a Private Limited Company on 28.05.2003, under the provisions of the Companies Act, 1956. The present Authorised Capital of the Company is Rs.40,00,000/- (Forty Lakhs only) divided into 4,00,000 equity shares of Rs.10/- each. The present Paid up Capital of the Company is Rs.30,01,000/- (Thirty Lakhs One Thousand only) divided into 3,00,100 equity shares of Rs.10/- each.
- 2) The Company was promoted by Mrs.Proddaturi Malathi, the Petitioner herein, Mr. Proddaturi Rama Krishna, the Respondent No. 5 and Mr. Sekhar Pendam, the Respondent No.2.
- 3) The Company’s shareholding pattern at the time of incorporation till date is as under:
 - a) At time of incorporation:

S. No	Shareholder Name	No. of Shares of Rs.10/- each	Amount	Percentage of shares
1	Sekhar Pendam	5,000	50,000	49.95%
2	Proddaturi Malathi	5,000	50,000	49.95%
3	P. Rama Krishna	10	100	0.10%
	Total	10,010	1,00,100	100%



- (b) The Company's shareholding pattern as on 31.03.2015 as per the Annual Return for the year ended 31.03.2015 was as under:

S. No	Shareholder Name	No. of Shares of Rs.10/- each	Amount	Percentage of shares
1	Sekhar Pendam	24,995	2,49,950	49.99%
2	Proddaturi Malathi	24,995	2,49,950	49.99%
3	Salalitha Parsha	10 (impugned transfer)	100	0.02%
	Total	50,000	5,00,000	100%



- (c) The Company's shareholding pattern after the impugned allotment dated 30.09.2015 is as under:

S. No	Shareholder Name	No. of Shares of Rs.10/- each	Amount	Percentage of shares
1	Sekhar Pendam	58,615	5,86,150	39.08%
2	Proddaturi Malathi	42,875	4,28,750	28.58%
3	Salalitha Parsha	48,510	4,85,100	32.34%
	Total	1,50,000	15,00,000	100%

- (d) The Company's shareholding pattern after the impugned allotment dated 26.11.2016 is as under:

S. No	Shareholder Name	No. of Shares of Rs.10/- each	Amount	Percentage of shares
1	Sekhar Pendam	2,08,615	20,86,150	69.51%
2	Proddaturi Malathi	42,875	4,28,750	14.29%
3	Salalitha Parsha	48,510	4,85,100	16.17%
4	Mallesham Mekala	100	1,000	0.03%
	Total	3,00,100	30,01,000	100%

- e) Shareholding details of Petitioner (after impugned allotments dated 30.09.2015 and 26.11.2016) is as under:

S. No	Shareholder Name	No. of Shares of Rs.10/- each	Amount	Percentage of shares
1	Proddaturi Malathi	42,875	4,28,750	14.29%
	Total	42,875	4,28,750	14.29%



- f) Shareholding details of Respondents group (after impugned allotments dated 30.09.2015 and 26.11.2016) is as under

S. No	Shareholder Name	No. of Shares of Rs.10/- each	Amount	Percentage of shares
1	Sekhar Pendam	2,08,615	20,86,150	69.51%
2	Salalitha Parsha	48,510	4,85,100	16.17%
3	Mallesham Mekala	100	1,000	0.03%
	Total	2,57,225	25,72,250	85.71%

- 4) As on the date of Incorporation of the Company, the following were the First Directors:

S No	Name	Designation	Date of Appointment
1	Sekhar Pendam	Managing Director	28.05.2003
2	Proddaturi Malathi	Director	28.05.2003

- i. Later on, the constitution of the Board of Directors was as follows:

S No	Name	Designation	Date of Appointment
1	Sekhar Pendam	Managing Director	28.05.2003
2	Proddaturi Malathi	Director	28.05.2003
3	Salalitha Parsha	Director	24.10.2003

5) The impugned Board Meeting was held on 31.10.2016 for issue of Notice of Extra-ordinary General Meeting without issuing any notice of Board Meeting, as per the provisions of the Companies Act, 2013 and SS -1 (Secretarial Standard on meetings of the Board of Directors) issued by the Institute of Company Secretaries of India.



6) It is stated that Mr. Mallesham Mekala is appointed as Additional Director of the Company at a Board Meeting held on 26.11.2016 for which no notice was issued as per the provisions of the Companies Act, 2013 and SS -1 (Secretarial Standard on meetings of the Board of Directors) issued by the Institute of Company Secretaries of India.

7) Allotment of shares was made in the Board Meeting held on 30.09.2015. The date of Board Meeting has not been mentioned in Form MGT-7 (Annual Return) as on 31.03.2016 which was filed with the Registrar of Companies, Hyderabad. It is alleged that in the minutes of the Annual General Meeting held on 30.09.2015, which were attached to Form MGT-14, in which the mentioning of members present is differed with the Form MGT-7 (Annual Return) filed for the financial year ended 31.03.2016 with the Registrar of Companies, Hyderabad.

8) It is contended that the Petitioner is having little knowledge on the affairs of the Company as the Respondent No. 2 being the Managing Director himself is taking care of the affairs of the Company. In fact, there were no invitations for Board meetings and general meetings held. *Being a closely held company, with good faith, the Petitioner has signed on some papers given by the Respondent No. 2.* The Petitioner and the Respondent No. 2 are the business associates with equal ratio of partnership in about 3(Three) Partnership Firms such as M/s. S R P Logistics, M/s. Sree Freight Forwarders and M/s. S R P Farms. Therefore, it is an understanding and known fact and condition stipulated by the both the parties orally, morally and legally that there should not be any deviation of shareholding or any share in any

partnership of business firm without the knowledge of the other party. The Respondent No. 2 has violated such terms and conditions only with an intention to have a personal gain to him and to his wife with an ulterior motto to gain control over the Company.

- 9) The petitioner has requested numerous times to allow her to go through and inspect the books of accounts, minutes books and statutory registers including attendance registers for board meetings and general meetings, register of members, Register of Directors, register of Director shareholding, register of transfers, register of allotment, etc. However, it is alleged that Respondent No. 2 has not acceded to the request made by the petitioner and has continued to behave differently and the business of the company has been run for his personal benefits and there are occasions where the Respondent No. 2 has transferred/encashed several amounts from the Company. The Respondent No. 2 has not furnished bank statements to the petitioner in spite of several requests. The Respondent No. 2 has unilaterally operating the Bank Accounts of the Respondent No. 1 Company with his single signature as authorised signatory. Since the conduct of Respondent No. 2 is prejudicial to the interest of the Respondent No. 1 Company and to the Petitioner, it is need of the hour to change the authorised signatory for operation of bank accounts jointly with the petitioner.

- 10) It is stated that the petitioner has received a notice dated 04.03.2017 with regard to conducting of Board Meeting on 15.03.2017. The petitioner has made certain objections vide her letter dated 11.03.2017 with regard to conducting of the Board Meeting on 15.03.2017 in which the petitioner categorically questioned how Mr. Mallesham Mekala be regularised as Director and under what circumstances it was proposed to remove the petitioner from the Directorship. The petitioner has also questioned the proposed allotment of 99,900 equity shares to the Respondent No.2 including the intention in conducting Extra-



ordinary General Meeting in a hurried manner. After receiving the said letter dated 11.03.2017, the Respondent No.2 has called the Petitioner over phone and lured her with certain promises and requested to attend the meeting. The Respondent No.2 has assured the petitioner that the Petitioner will be continued as Director and appointment of Mr. Mallesham Mekala as an Additional Director will be nullified and another Additional Director with the choice of the Petitioner will be appointed in the Company and the ratio of the shareholding shall be maintained to the petitioner at 50%. The Respondent No.2 has also promised that 10 shares held by the Respondent No.3 which was transferred illegally from Mr.Proddaturi Rama Krishna, Respondent No.5 will be transferred back to him. By believing the false promises made by the Respondent No.2, the Petitioner went to the premises to attend the board meeting on 15.03.2017 at 10.00 A.M. at the scheduled time. The venue of the Board Meeting is nothing but the residence of Smt. S.Kavitha Rani, Practicing Company Secretary, who is shown as invitee in the notice of the Board Meeting. When the Petitioner tried to enter into the venue of the Board meeting, the Respondent No. 2 and his henchmen objected the Petitioner to enter in to the premises, abused the petitioner with filthy and un-parliamentary language and threatened the Petitioner if she entered in to the premises, she has to face the dire consequences. The Petitioner was compelled to leave the premises. To avoid the physical tussle and not to have any bodily injuries, on the advice of the well-wishers, with a heavy heart of standing throughout till 12.30 P.M. as an affected party, though the Petitioner is thought of approaching the police authorities, on the advice of well-wishers and legal experts, left the premises with a view to approach this Hon'ble Tribunal for relief and justice.

- 11) It is stated that the Petitioner has received a notice of Extraordinary General Meeting dated 15.03.2017, which is going to be conducted on 10.04.2017 with an agenda to transact the business



for removal of Mrs. Proddaturi Malathi, the Petitioner, from the office of the Director of the Company and to regularise services of Addll Director Mr. Mallesham Mekala(Respondent No. 4) as Director of the Respondent No. 1 company. The business contemplated in the proposed Extra-ordinary General Meeting dated 10.04.2017 was against the provisions of the Companies Act, 2013. The regularisation of the appointment of Mr.Mallesham Mekala from the Additional Director to Director is in sheer violation of the provisions of Section 161(1) of the Companies Act, 2013.



- 12) It is contended that the Petitioner has also approached the Registrar of Companies with a Complaint as soon as the notice for the Board Meeting dated 04.03.2017 is received by the Petitioner. It was advised by the office of the Registrar of Companies that the Petitioner has to file an electronic Investor Complaint Form for a speedy Redressal of the complaint. Accordingly, as advised, the Petitioner has filed the complaint in the electronic form with the Registrar of Companies. No reply has been received so far till the date of this petition about action if any initiated.
- 13) It is alleged that allotment of shares to Respondent No. 2 & 3 as on 30.09.15 with an intention to gain control over the Company and to reduce the stake of the Petitioner is against the provisions of Section 62 of the Companies Act, 2013 is an act of oppression. The petitioner ought to get equitable ratio of shares but has been allotted with less number of shares.
- 14) It is alleged that the petitioner has not received any notice to convene the Board Meeting, which was stated as held on 31.10.2016. The only aim of conducting such board meeting was nothing but to convene the Extra-ordinary General Meeting with an aim to increase shareholding of the Respondent No.2 and allotting shares to the Respondent No. 4. Therefore the Board Meeting held on 31.10.2016 is not valid and against the provisions of Section 173(3) read with 173(4) of the Companies Act, 2013.

- 15) Allotment of shares made on 26.11.2016 to the Respondent No. 2 and the Respondent No. 4 without issuing notice of Board Meeting to the Petitioner is not valid and allotment is made to gain control over the Company and to reduce the stake of the Petitioner which is against the provisions of Section 62 of the Companies Act, 2013. It is another act of oppression.
- 16) The appointment of Mr. Mallesham Mekala, the Respondent No. 4 as an Additional Director at the Board Meeting held on 26.11.2016 without issue of notice for Board Meeting to the Petitioner is not valid and his appointment is against the provisions of Section 173(3) read with 173(4) of the Companies Act, 2013. The above act is mismanagement and it is only to gain control over the Board which is against the interest of the Petitioner.
- 17) It is therefore, contended that above series of the oppressive acts of the Respondents 2 & 3 would cause an equitable ground to wind up Company but it will be prejudicial to the interest of the Petitioner as well as the 1st Respondent Company. Therefore, the Petitioner has filed the present petition by seeking the relief as mentioned supra.



3. The Company petition is opposed by the respondent No. 1 and 2 and their contentions, in brief, are as follows:
 - 1) The petitioner has come out with unclean hands by not disclosing that she was all along consenting party as a whole time Director of the Company, on this count alone the petition is liable to be dismissed.
 - 2) The Company was incorporated in 2003 and it is engaged in the Customs Clearance, Freight Forwarding, Logistics and Transportation. To carry out the activities of the company a **Customs Broker License** issued by Govt. of India is must. Without this Custom Broker License, company would not be able to carry on its main objects. The respondent No 2 has successfully cleared the written examination of the Customs and Central Exercise and got License No. 07 of 2003. Only the second

respondent is competent to transact the business of Company and the petitioner is not qualified to work as custom house agent. It is asserted it is only second respondent, who is instrumental in running the affairs of Company.

- 3) It is contented that Petitioner has drawn remuneration of Rs.5,40,000/-each for year 2014-15& 2015-16. Annual Returns are not routine matter and they are prima facie evidence as per **Section 95 of the Act**. The petitioner herself uploading all annual returns, now cannot belatedly feign the ignorance of the contents thereof and she is prevented from the challenging the same.

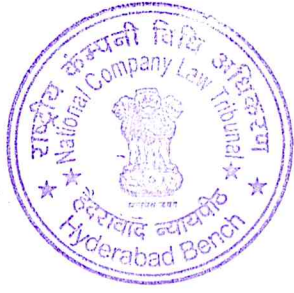


It is stated that transfer request from Respondent No. 5 was noted by the Company in the Board Meeting held on 04.04.2005 in which Petitioner was also present.. It was decided in the said meeting that the shares be transferred to Respondent No. 3, who is the Director of the Company; the petitioner who was present consented for the decision. On 16.06.2005 the Board approved transfer of 10 shares from Respondent No. 5 to Respondent No. 3. In the said Board Meeting, the Petitioner is also the beneficiary of first allotment of shares to the extent of 19,995 she is the beneficiary in the allotment to the extent of 17,880 shares. She exercised her voting and other rights in those shares in the AGMs, EGMs held subsequently. By accepting the shares allotted to her, the petitioner cannot question the decisions selectively and it is not only barred by laches and limitation but she is also estopped from questioning it.

In this regard, the petitioner relies upon the judgment Hon'ble NCLAT in Appeal No. 26 of 2016 in the Case of *M/s. Esquire Electronics Inc. Anr. Vs. Netherlands India Communications Enterprises Ltd. & others* dated 15.02.2017, in which it is interalia held as under:

"We also agree with the finding of the Tribunal that the suit for which there is no prescribed period is provided as per Article 113 of Limitation Act 1963, period of limitation is three years. For the

reason aforesaid we agree with the findings of the Tribunal that the appellant(s) cannot rake up any issue which is barred by limitation i.e., of a period which is three years prior to the date of filing of the Petition.”

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- 4) The respondents have also relied upon the judgment rendered in **Abdhul Rahim vs. Md. Azimuddin (AIR 1965-Patna-156)**, in support of their contentions that while admitting signed some blank papers, is now denying every signature of her and it is nothing but blowing hot and cold in same breath. They relied upon para (8) of the judgment which reads held as under:

“(8)... There is a certain amount of peril for the party who takes absolutely inconsistent pleas grounded on different and contradictory facts, and while leading evidence in support of them he will have to blow hot and cold in the same breath which is bound to shake confidence in the truth of his allegations. For such reasons, inconsistent defences that will depend upon contradictory facts are not generally permitted.”

- 5) Mere denials of signature of petitioner, after signing relevant proceedings in question of Board Meetings are not all tenable. In this regard , the respondents relied upon para 24 of rejoinder filed before NCLAT , which reads as under:

“24....It is submitted that mere lacuna on the part of the appellant, if any , in raising objection at the time of the Meeting dated 30th September, 2015, cannot amount to sanction of the unlawful and illegal conduct of the Respondents in conducting the said Meeting.”

- 6) It is stated that list of allottees contains all the three Directors of the Company, who are also 100% shareholders of the Company got shares allotted by merely converting the pending share application money that was lying in the books of accounts and were allotted by way of unanimous resolution passed by the Board of Directors (and also 100% shareholders of the company). The Balance sheet for year 2014-15, which clearly discloses a sum of Rs. 8,42,601/- was pending as share application money and this balance sheet was also authenticated by petitioner herself.

The Ministry of Corporate Affairs vide its notification No. G.S.R. 241(E) dated 31.03.2015 has directed the companies to complete the share allotments with respect to share application money pending with the Company before the notification of 2013 Act. Hence the company allotted shares with respect to pending share application monies received from shareholders/directors to

the extent of the share application money pending as on 30.09.2015. Since all these shareholders and directors have participated and approved the allotment on 30.09.2015 there cannot be any complaint or grievance on this issue by any of the shareholders.



- 7) It is stated that the petitioner has also admitted her attendance at Board Meeting held on 31.10.2016 and the same is also reiterated in the rejoinder of petitioner filed before Hon'ble NCLT at para 27, which is extracted below:

"...it is submitted that mere lacuna if any in raising any object at the time of meeting dated 31.10.2016 cannot amount to sanction of the unlawful and illegal conduct of the respondents in conducting the said meeting...."

The conduct of the petitioner is clearly exposed where she takes different stands before NCLAT and NCLT. On one hand she complains she has not received notice for the Board Meeting and on the other hand she says she attended the Board Meeting. Both statements cannot stand together.

- 8) It is denied that no notice was issued to the petitioner for the Board meeting held on 26.11.16, and on the contrary, she has participated in it, and consented for decisions taken during the meeting. And she never made any complaint so far either to the Company or to the respondents regarding this allotment. She has attended meetings subsequently.
4. Heard, Shri. V. Venkata Rami Reddy, learned counsel for the Petitioner, Shri. S. Chidambaram, PCS for Respondent Nos. 1 & 2 and Smt. C. Shilpa, learned counsel for Respondent No. 5. The learned Counsel for Respondent No.5 merely submits that she has filed only Vakalat without any counter and submit that she would file written arguments. The learned counsel for the Petitioner and the learned PCS for Respondent No. 1 and Respondent No.2 are permitted to file their written arguments.
5. Mr. Venkatarami Reddy, while reiterating various averments made in the petition has further submitted that transfer of shares of Respondent No. 5 to Respondent No. 3 is in violation of Section 108 of

the Companies Act, 1956, and Article 14 and 15 of the Articles of Association of the Company. The Annual Return filed for the year 2006 also did not indicate the transfer of shares during year 2005 and 2006. The original documents have to be called for verification.

He has stated with good faith and general practice, the Petitioner has signed on some papers on the behest of the Respondent No. 2 who has misused signature for some other purpose. As per balance sheet made as on 31.03.2015, share application money was Rs.8,42,601/-. Whereas 1,00,000 shares of Rs.10/- each worth of Rs.10,00,000/- were allotted and this allotment is in excess of Rs.1,57,399/-. Therefore, the said allotment is against the provisions of the Companies Act, 2013.

He has further contended that the Respondents acted contrary to the Notification vide GSR 241(E) dated 31-03-2015 issued by Ministry of Corporate Affairs (Notification) where in it was notified that the shares against which the allotment was pending as on 31-03-2015 were required to be allotted by 1st June,2015. The Company shall by 1st June,2015 either return such amounts to the persons from whom they were received or allot shares. A perusal of the documents on record demonstrates that Respondents effected the allotment of shares on 30th September,2015. Furthermore, even though an amount of Rs.8,42,601/- was pending as share application money as per the Balance Sheet for the year 2014-15, the respondents made unlawful allotment of Rs.10,00,000/- in excess of Rs.1,57,399/- . It is to be noted that the monies received as share application money available as per the Balance sheet and the excess amount for which shares were allotted were shown as received in cash which is impermissible under the Provisions of the Companies Act,2013 and the Rules and Regulations made there under. It is also submitted that under the Companies Act, 2013 and the Rules and Regulations made there under, fresh offer of allotment cannot be made unless and until the previous allotment is complete. The offer and allotment of share worth of



Rs.1,57,399/- effected by the Respondents are in clear violation of said Regulations.

6. He has further contended that in blatant violation of the provisions of the Companies Act, 2013, the Respondents had increased their personal shareholding on 30-09-2015 and 26-11-2016 in a manner prejudicial to the interest of the petitioner and the 1st Respondent Company. The 2nd and 3rd Respondents with an intention to oppress the petitioner had materially changed the shareholding of the 1st Respondent Company which is totally against the interest of the Petitioner. By denying the documents filed by the respondent, the petitioner sought inspection of documents and for forensic examination of Rule 43 of NCLT Rules, 2016.
7. Mr. Chidambaram has also reiterated various averments made in the reply and prayed the Tribunal to dismiss the petition and also produced original records relating to the case.
8. By perusing pleadings of both the parties, the following main issues apart from other minor issues arise for consideration:
 - i. Whether Board meetings dated 30.09.2015 and 31.10.16 were properly conducted in accordance with law, and if so what is effect of decisions taken during those meetings;
 - ii. Whether the allotment of shares made on 26.11.2016 to Respondent No.2 and Respondent No.4 are valid or not;
 - iii. Whether appointment of Respondent No.4 as Additional Director of the Company in the Board Meeting held on 26.11.2016 is legal ;
 - iv. Whether the removal of the petitioner as Director of Company is valid in law since the petitioner is life time Director of the Company;
 - v. If so, what is the relief petitioner is entitled for
9. The basic facts which are relevant to the issue , and not in dispute are as follows:
 - 1) SRP logistics limited was Incorporated on 20 May 2003 and its main are to carry on business in customs clearing forwarding cargo handling import, export service et cetera as per the Constitution of the company, the regulations contained in table



year of the schedule of the companies act 1956 in so far as they are applicable to a private company shall apply to the company.

- 2) The Company is a private limited company within the meaning of section 3 (1) (iii) of the company's act 1956. The right of transferor of shares is restricted and prohibits any invitation or acceptance of deposits from persons other than its members/directors or their relatives. The initial authorized share capital of the Company is 5,00,000 divided into 50,000 equity shares of ₹ 10 each as per article 3(a) . As per Article 4 , shares will be under the control of the directors who may are a allot or otherwise dispose of the same or any of them to such persons, either at premium or at par or a discount and at such times as directors may think fit and with the power to issue any shares as fully paid-up in consideration of services rendered of the Company in its formation or otherwise on such terms and conditions as Board of Directors in the direction deem fit but subject always to the provisions contained in article 2 which is finally subject to provisions of Act. . Article 11 deals with transfer and it says shares cannot be transferred except a person agreed to by a majority of directors as being fit and proper to hold such shares with exception that it shall not apply where the holder of shares proposes to transfer the shares to any other member or to his son or daughter, uncle or aunt or wife or husband father or mother or grandmother or grandson of a daughter,brother or sister, or nephew niece.

- 3) The memorandum Association of the Company are subscribed by P.Sekhar(Respondent) for 5,000 shares P.Malathi(petitioner) for 5,000 shares and P.Rama Krishna, for 10 shares . And the same persons have signed the articles of Association. As per the article 26 of the Company, the first directors are P.Sekhar (Respondent No 2) and P.Malathi(petitioner) . It is stated therein that they are permanent directors for their lifetime or until they voluntarily resign and they shall not be liable to retirement by rotation, however, subject to provisions of Act.



- 4) It is also not dispute that every Company including the present Company registered under provisions of the companies' act 1956/2013 is ultimately governed by its provisions and all articles of a Company should be in consonance with provisions of Companies Act.
- 5) As per said Article, the the Board of Directors may allot or otherwise dispose of the same or any of them to such persons etc. In the instant case, it is not in dispute that. P.Rama Krishna was holding 10 equity shares at its incorporation of the Company itself. And these shares have been transferred to the respondent No. 3, who is the Director of the Company, as early as 2005 and it was also noted by the Board meeting held on 04.04.2005, in which the petitioner was also present. It is not in dispute that said Rama Krishna did not challenge transfer his shares till date. In pursuant to said transactions, several material developments have taken place in the Company since the respondent No. 2 & 3 are husband and wife respectively and constituted majority. The petitioner has no locus standi to question said transfer and she is also estopped from questioning it. Moreover, it is admitted position that the petitioner has participated in the annual general body meeting and also the Board of Directors meeting held on 30 September 2015, during which all previous proceedings, apart from current proceedings were duly approved. The petitioner, in his rejoinder filed in reply to the counter filed by the respondent Nos. 1 & 2 dated 16 November 2017, under paragraph 5, has again admitted that the petitioner has signed some papers on the best of respondent No. 2 but they were misused by the respondent No. 2. Therefore, the allegation cannot be accepted and it is an afterthought.
- 6) On direction of the Tribunal, the Respondent has produced all original records relating to issue in question. We have carefully perused all proceedings. Crucial documents to be scrutinized are the proceedings of meetings of Annual General Body Meeting and Board of Directors meeting held on 30 September 2015 in



which the petitioner has admittedly participated. The minutes of AGM held on 30 September 2015 has recorded that both the petitioner as well as the respondent No 2 were present. During these proceedings, it was resolved to increase the authorised share capital of the company from the existing 5,000, equity shares into 1,50,000 equity shares of ₹ 10 each ranking pari passu in respect of all with the existing equity shares of the Company. The chairman / second respondent herein is authorized to take appropriate steps to amend the articles of Association.



- 7) The minutes of the Board of Directors meeting held on 30 September 2015 at 3:30 PM at the registered office of the Company clearly shows that the petitioner as well as the second respondent was present as Director and chairperson respectively. During the meeting, apart from transacting the routine business of approving the events of the previous Board meeting etc, has also taken into consideration of the increase in share capital and authorized the chairperson/second respondent herein to take appropriate steps. Accordingly, it was resolved that the equity share capital to the extent of share application money pending allotment as on 30 September 2015 be allotted to persons in whose name the share application is pending for allotment. Accordingly, additional shares have been allotted proportionately to the petitioner, second and third respondents, in addition to the shares held by those persons. The petitioner was also allotted 17, 880 equity shares apart from the second and third respondent. It is not in dispute that the share application money was pending in the books of the company. The Company has also filed a copy of the Ledger enclosed to Balance in question with respect to share application money in respect of the petitioner, respondent No. 2, & 3. Therefore, it is clearly established that based on the pending share application money, the shares were allotted.
- 8) The record discloses that the petitioner is a whole time Director and is in receipt of remuneration for the service rendered to the Company. The balance sheet as on 31 March 2015 discloses that the share application money of ₹ 842,601 is with the Company



carrying forward previous balance sheet as at 31.03.14. As per the income tax returns filed for assessment year 2015- 16 ₹ 540,000, was paid for petitioner; Rs 16,20,000 for Second respondent and Rs ₹ 5,60,000. for third respondent .Similarly , as per Income tax Returns for the assessment year 2016 - 2017 , the petitioner was paid ₹ 540,000 / respondent No. 2 & 3 were also paid Rs, 17,40,000 , 6,00,000/ respectively.

- 9) We have compared the signatures of the petitioner, which are available on the admitted signatures of the petitioner on the proceedings leading to allotment of shares on 30th September, 2015 with that of other signatures of petitioner on the disputed documents in question. We found that there is no iota of doubt that the petitioner signatures are one and the same, and it requires no further examination like sending the document for forensic examination etc as contended by the petitioner. The Hon'ble Supreme Court in Sukhvinder Singh and ors Vs. state of Punjabi has interalia held that Courts can compare signatures of parties. Moreover by accepting additional shares by the petitioner by virtue of impugned proceedings dated 30 September 2015, it is not at all tenable to question those proceedings on frivolous grounds. We have no doubt to come to a conclusion that the petitioner having participated in the proceedings, cannot subsequently raise any dispute for the proceedings, which have been taken strictly in accordance with law. It is also relevant to point out here only the petitioner and the second respondent are two shareholders available in the Company and other share holders holding 10 equity shares were subsequently transferred to respondent No. 3, who is none other than the wife of second respondent. Therefore, the second respondent and third respondent together constituted majority in the Company to run the affairs of the Company.
- 10) The other contention that the petitioner being a lifetime Director as per article of Association cannot be removed by the Company is not at all tenable for the simple reason that the



Company is ultimately bound by the provisions of the Companies Act 1956/2013. As per Section 169 of Companies Act, 2013, a Director, not being a director appointed by the Tribunal U/s 242, can be removed, by ordinary resolution of a Company, before expiry of period of his office after giving him a reasonable opportunity of being heard. In the instant case, even though notice was given to the petitioner to conduct EGM on 10.04.17, it was not conducted due to the present case is pending and it was convened on 12 August 2017 but it was kept pending by adjourning EGM sine die in view of the directions given by the Hon'ble NCLAT.

- 11) It is not the case of petitioner that she was allotted less number of shares than the share application money pending with the Company or she has expressed her readiness to buy increased shares at the relevant point of time. The petitioner after accepting additional shares has now come by rising baseless grounds. The petitioner has admittedly did not raise any dispute during the meetings held on 30.09.15. The petitioner having participated after having due notice has come to this Tribunal by simply denying her signature on every meeting, which is against her interests. As stated supra, the petitioner failed to substantiate bald denial of her signature on the impugned proceedings with any other corroborative evidence. So, the petitioner cannot seek any further investigation into her false allegation of forgery on documents in question.
 - 12) The above circumstances clearly shows that the petitioner failed to make out a even prima facie case to make an investigation into the affairs of the Company and the petitioner has not come with bonafide reasons and clean hands to seek equitable relief in the present Company petition. Therefore the company petition is liable to be rejected.
10. In the light of above discussion of the case, the specific issues raised and relief asked in the present Company petition are answered below:



- 1) So far as to declare impugned transfer of shares from P. Rama Krishna is concerned, as discussed supra, the petitioner has no locus standi to question it on a number of grounds and he is admittedly one among three promoter of the Company and thus he is aware of about his shares and transfer in the Company . The minutes of Board of Directors held on 24th October, 2003 in which the second respondent and petitioner attended, has unanimously passed resolution appointing Ms. Salalitha Parsha (Respondent No. 3) as Director of the Company wef 24.10.03 with authorization to the second respondent to take all necessary action to appoint her. Subsequently, the Board of Directors at its meeting held on 4th April, 2005, in which,, the petitioner, respondent Nos. 2 & 3 present has interalia passed resolution at item No. 3 as “The Chairman informed that Proddaturi Ramakrishna holding 10 shares in the Company as given notice that he is desires to transfer all his shares to any person identified by the Company at a price of Rs. 10/- . After a brief discussion, it was decided to accept the transfer request and said shares may be transferred to Mrs. Salalitha Parsha, Director of Company. The Board authorized the Chairman to do further acts in this regard and communicate the Board’s decision to Mr. P.Rama Krishna” Accordingly, in the subsequent Board meeting held on 16th Day of June, 2005, while approving the minutes of previous Boards meeting, has further resolved for approval of transfer of shares as follows”

‘The Chairman informed that share certificates along with duly filled in transfer deed received from Mr. P.Rama Krishna , who was holding 10 shares of the Company and passed resolution unanimously approving and transferring those shares to third respondent with an authorization to second respondent to take all necessary steps in that regard. And these minutes were subsequently approved in the next Board meeting held on 27th June, 2005.

Therefore, it is clearly established that shares of said Rama Krishna were duly transferred to third respondent and the allegations of petitioner are totally baseless and un-called for and thus they are hereby rejected.

- 2) So far as the issue of declaring impugned allotment of shares made on 30.09.15 and 26.11.2016 are concerned, as discussed

supra, the petitioner is part of those proceedings and she was given adequate opportunity to express her voice but she being in minority position cannot dictate terms to people in majority by raising un-tenable and un-substantial grounds. It is true that Section 62 of the Companies Act, 2013 has to be taken into consideration, while allotting new shares/transfer of shares. Section 62 of the Companies Act, 2013 says that shares which are proposed to be increased by the Company should be offered to the existing shareholders in proportion. In this context, it is relevant to advert the minutes of Board meeting held on 30.09.2015. In this meeting Mr. Shekar Pendam (Respondent No.2), Chairperson and the petitioner were present and following resolution has been approved:

Confirmation of the Minutes of Last Board Meeting:

The Minutes of the previous Board Meeting were placed before the Board and same were signed and confirmed.

INCREASE IN AUTHORISED CAPITAL:

The Chairman has informed the Board about the fact of approval of alteration of Memorandum of Association and Articles of Association by the members at the Annual General Meeting held on 30.09.2015. After due discussions the following resolutions were passed to give effect to the resolutions.

“RESOLVED that steps be taken to comply with the resolution passed for increase in authorized capital of the Company from Rs 5,00,000/-, divided into 50,000 equity shares of Rs. 10/- each to Rs. 15,00,000/- divided into 1,50,000 equity shares of Rs. 10/- each. It is further resolved that Sri P. Shekar, Director of the Company be and is hereby authorized to sign in physical or digitally the various statutory forms and documents as and when required to effect the above.”





- 3) It is not in dispute, that in pursuant to the above resolution, shares have been allotted to the petitioner, Respondent No.2 and Respondent No.3, (Pendram Shekar-33,620 shares, Proddaturi Malathi-17,880 shares and Pendram Salalitha -48,510 shares) at the nominal value of Rs. 10/- each. It is also not in dispute that the share application money of Rs. 8, 42,601/- was pending allotment of shares and the same was also reflected in the balance sheet as on 31.03.2015. All the above meetings were attended by the petitioner and also signed in the attendance register. The Ministry of Corporate Affairs Notification dated 31.03.2015 has interalia directed to allot shares for the money pending for allotment or return it by 01.06.2015. The petitioner, while accepting the above allotment made to her, is trying to dispute allotment made to others without any basis. The petitioner while admitting that share application money was pending with Company is only disputing quantum of amount. However, the relevant Balance sheet proves that share application money and the Company have proportionally been allotted shares as stated supra. Therefore, the allegations of petitioner contrary to above position are not tenable and they are hereby rejected. Therefore, Board meetings held on 30.09.2015, 31.10.2016, 26.11.16 and the consequential allotment of shares made on 30.09.15 and 26.11.2016 and appointment are declared to be legal.
- 4) So far as the contention of petitioner that all her signatures are forged, and they are to be called and sent for forensic examination etc are concerned, as stated supra, we have called original records of the Company so as to see whether allegations of petitioner have any basis and already expressed our opinion and law with regard to this allegation. It is also relevant to point out here that petitioner has admittedly signed papers and handed over



the same to respondents and having admitted signing papers thereby accepting her signature on the papers in question, she cannot turnaround and denied for its misuse. Once admitted to have signed papers, she is estopped from questioning it later saying that intention was different. She has not substantiated that allegation with any corroborative evidence.

It is no doubt that Rule 43 of NCLT Rules,2016, empowers the Tribunal to make such exercise in the interest of justice if facts of particular case warrants such exercise and it cannot be resorted merely at the request of parties without prima facie making out case for the same. Rule 43 is extracted below:

“43. Power of the Bench to call for further information or evidence. -

- (1) *The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-*
 - (a) *for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or*
 - (b) *for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.*
- (2) *Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic*

certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.



By perusal of pleadings of both parties and records of Company, we are not persuaded to send disputed documents for forensic examination. Signatures of petitioner are substantially tallying with admitted signature with corroborated evidence like petitioner has signed some papers, accepting allotment of shares etc as discussed supra.

- 5) So far as contention raised before the Hon'ble NCLAT with regard to removal of petitioner, who is nominated as life time Director, is concerned, as discussed supra, the Company is ultimately governed by provisions of Companies Act, 1956/2013 and the Memorandum and Articles of Association of Company cannot have overriding powers over the Companies Act. It is admitted position that special notice dated 15.03.2017 was given by the Respondent No.2, U/s . 115 of the Companies Act with agenda of removing the petitioner as Director of the company. Section 169 of Companies Act, 2013 deals with removal of a Director. Sections 115, 117 and 169 are extracted below for ready reference.

As per Section 117 of the Companies Act, 2013:

“Resolutions and agreement to be filed”.

117. (1) A Copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in

such manner and with such fees as may be prescribed within the time specified under section 403:

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

(2) If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(3) The provisions of these sections shall apply to-

- (a) Special resolution;*
- (b) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;*
- (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;*
- (d) resolutions or agreements which have been agreed to by any class of members but which, if not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all*





resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to the exercise by its Board of directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(g) resolutions passed in pursuance of sub-section (3) of section 179; and

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

Section 115 of the Companies Act, 2013, which is relevant in the instant case is extracted below for ready reference::

“Resolution requiring special notice.

115. Where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than one per cent of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

As per section 169 of the companies Act, 2013 deals with the removal of the director and the section is extracted below for ready reference:

“Removal of directors”

169. (1) A company may, by ordinary resolution, remove a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principles of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the director concerned make with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,-

- (a) in any notice of the resolution given to members of the company, state fact of the representation having been made; and*
- (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company).*

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other





person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section(2).

(6) A director so appointed shall hold office till the date of up to which his predecessor would have held office if he had not been removed.

(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(8) Nothing in this section shall be taken-

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act.

11. By the reading of the above provisions of the Act, even though Articles of Association of the Company named petitioner as Life Time Director, she can be removed as per the above provisions. It is not in dispute that petitioner was in receipt of notice to convene Extra Ordinary General Meetings of Members of the Company to be convened on 10th



April, 2017 for her removal. The petitioner was stated to have attended it, after scheduled time of 10.00 AM was over, and she has signed attendance at 10.57 A.M. By that time, a resolution to remove the petitioner as Director was adopted, subject to provisions of Section 169 of Companies Act, 2013, apart from regularizing the services of Malleshm Mekala (respondent No. 4 (who was initially appointed as Addl. Director wef 26th November, 2016) as regular Director of the Company. However, the same was not given effect to till date due the case is pending before this Tribunal and then before Hon'ble NCLAT. Again a notice dated 10th April, 2017 was issued proposing to conduct a meeting of Board of Directors of the Company to be held on 22nd April, 2017 at 10.00. The petitioner, while accepting the receipt of said notice on 13.4.17, has addressed a letter dated 15th April, 17 by inter alia requesting to defer it to a later date since the matter is subjudice. However, it is stated by the Company that proceedings for removal of petitioner are kept pending since the matter is subjudice. Since the Hon'ble NCLAT, vide its order dated 6.11.17 has inter alia directed as not to give effect to resolution on the issue till the disposal of case, now the Company is free to take appropriate decision in accordance with law duly following principles of natural justice.

12. It is also relevant to point out here that the petitioner being whole time Director, and in receipt of remuneration from the Company along with other directors, cannot plead ignorance of affairs of the Company. As stated supra, the petitioner is yet to be removed from the position of Director. As per section 166 of Companies Act, 2013, a Director of a Company, subject to provisions of the Act, shall act in accordance with articles of the Company and shall act in good faith in order to promote the objects of Company for the benefit of its members as a whole and in the best interest of Company, its employees, shareholders, shall exercise her duties with due and reasonable care, skill and diligence etc. However, the conduct of petitioner being promoter Director, Whole Time Director taking huge remuneration as stated supra, not only failed in her statutory duties



as assigned to her but also resorting to all sorts of baseless allegations against the Company and filing cases before the Tribunal.

For the reasons stated above, we are of considered view that the petitioner has failed to make out any case so as to interfere in the matter by the Tribunal, and thus it is liable to be dismissed. Hence, the Company petition bearing C.P.No.36/241/HDB/2017 is hereby dismissed. No order as to costs.

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER C.P.No. 36/241/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 19.12.2017
प्रति तैयार किया गया तारीख
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