

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

**CP NO. 83/241/HDB/2017
U/s 59, 241 & 213 of the Companies Act, 2013**

In the matter of:

1. Mr. Bhavanasi Jaya Kumar
Flat No. 204, Meenakshi Royal Court Apartments,
Banjara Hills, Hyderabad, 500034, Telangana.
2. Mrs. Bhavanasi Apsara
Flat No. 204, Meenakshi Royal Court Apatments,
Banjara Hills, Hyderabad, 500034, Telangana. .. Petitioners

Versus

1. Nandan Renewable Energies Limited
Survey No. 142, 143, & 148 Huggely,
Zaheerabad, 502318, Telangana.
2. Mr. Srinivas Prasad Moturi
Plot No. 110, Road No. 10, Jubilee Hills,
Hyderabad, 500033, Telangana.
3. Mr. Volam Bhaskar rao
Flat No. 203, Meenakshi Royal Court Apartments,
Banjara Hills, Hyderabad, 500034, Telangana.
4. Mr. Bhupendra Kansagra
4 Old Gannon Close, Moor Park
Northwood, Middlesex, HA62LU.
5. Mr. Moturi Satyachandra Prasad
Plot No. 110, Road No. 10, Jubilee Hills,
Hyderabad, 500033, Telangana.



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

6. Mr. Moturi Suryakamal Prasad,
H. No. 8-2-293/82/A-110,
Road No. 10, Jubilee Hills,
Hyderabad, 500033, Telangana.
7. Nandan Cleantec Plc,
4th Floor, Heron House,
4 Bentinck Street, London- W1U2EF
8. Registrar of Companies,
Andhra Pradesh & Telangana
2nd Floor, Corporate Bhawan, GSI Post,
Tattiannaram, Nagole, Bandlaguda,
Hyderabad, 500068, Telangana.

....Respondents

Judgment Delivered on: 14.07.2017

CORAM:

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

**Counsels for the Applicants:
(PCS)**

Mr. S. Chidambaram

Counsels for Respondents :

Mr. Pradeep Kiran

Ms. C. Shilpa

Mr. V. Venkata Ravi

Reddy

Per: Ravikumar Duraisamy, Member (Technical)

Judgment

1. The petitioner has filed this Company petition under Sections 59, 241, and 213 and other applicable Provisions of the Companies



Act, 2013 for oppression and mismanagement in the affairs of the company inter alia seeking the following prayers:

- a. Declare that the acts of the Respondents 2 to 7 are prejudicial to the interest of the Respondent No.1 Company and are oppressive against the Petitioners.
- b. Declare that the impugned transfer of 1,15,000 equity shares made on 01.09.2012 from Petitioners to the Respondents No.3 and again the same shares being transferred from Respondent No. 3 to Respondent No.2 as illegal and void ab initio and order consequent rectification of Register of Members.
- c. Declare that the impugned Extra-Ordinary General Meeting held on 28.12.2012 as illegal and void ab initio and consequently declare all the forms filed with the Registrar of Companies relating to the said Extra- Ordinary General Meeting as illegal and void.
- d. Declare that the impugned Extra- ordinary General Meeting held on 01.10.2013 as illegal and void ab initio and consequently declare all the forms field with the Registrar of Companies relating to the said Extra- ordinary General Meeting as illegal and void.
- e. Declare that the impugned Extra-ordinary General Meeting held on 31.07.2014 as illegal and void ab initio and consequently declare all the forms filed with the Registrar of Companies relating to the said Extra- ordinary General meeting as illegal and void.
- f. Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper and thus render Justice.

2. Particulars of the Company:

1. The Nandan Renewable Energies Limited (CIN) (hereinafter referred to as the "Respondent No.1 Company") was



incorporated under the provisions of the Companies Act, 1956, on 11.02.2008.

2. The main object objects of the Respondent No.1 Company are:
 - a. To carry on business in India or elsewhere in promoting, setting up, creating and establishing manufacturing plants for the production of Biodiesel and/ or Synthetic Diesel with the use of any contemporary technology.
 - b. To carry on the business of Renewable and alternative energies like power generation from Biomas, MSW (Municipal Solid waste), Wind power, from the Tidal waves Bio Diesel.
 - c. To carry on the business to develop, produce, buy,sell, purchase, import and act as agents, distributors, traders and suppliers of Bio-diesel energy plantations like plantation of Jatropha, Pongamia and other varieties of plantations of Bio-diesel through contract farming model, develop Nursery production centres for the production of all kinds of Bio- diesel plantations through contract farming model and other business activities as mentioned in Memorandum of Association and Articles of Association.
3. The Petitioners humbly submit that though the Respondent No.1 Company was incorporated for carrying on the business as stated above it has not commenced its operations till date except the business of plantations. The Respondent No.1 Company has started investing in agriculture land and started business of plantation. It is pertinent to bring to the kind notice of this Hon'ble Bench as per Foreign Exchange Management (Transfer or issue of Security by a Person resident outside India) Regulations, 2000 Foreign Direct Investment is not allowed into the Company dealing in buying agricultural land and carrying on the business of plantation.



4. The Authorised Share Capital of the Respondent No.1 Company before the impugned increase is Rs. 1,00,00,000/- (Rupees One Crore only) divided into 10,00,000 (Ten Lakhs) Equity Shares of Rs.10/- (Rupees Ten Only) each. The Paid-up Capital of the Respondent No.1 Company before impugned illegal allotments is Rs. 55,00,000/- ((Rupees Fifty Five Lakhs only) divided into 5,50,000 (Five Lakhs Fifty Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each.
5. It is submitted that initially the Respondent No.1 Company was incorporated with Authorized Capital of Rs. 5, 00,000/- (Rupees Five Lakhs only) divided into 50,000 Equity Shares of Rs.10/- (Rupees Ten Only) each. The Respondent No.1 Company was incorporated by the Petitioners, Respondent No.3 and four other shareholders. The details of the subscribers of Respondent No.1 Company are as follows:

S.No	Name	Number Of Shares
1.	V. Bhaskara Rao	7,500
2.	B. Jayakumar	7,500
3.	Phaneesh Mudigonda	5,000
4.	C.S. Jadhav	7,500
5.	V. Sujhata	7,500
6.	B. Apsara	7,500
7.	Latha Jadav	7,500
	Total	50, 0000

The Petitioners humbly submit that the following are the first Directors of the Respondent No.1 Company:

S. No	Name of the First Director	Designation
1.	Mr. Volam Rao Bhaskar	Director
2.	Jaya Kumar Bhavanasi	Director
3.	Mudigonda Phaneesh	Director



6. The Petitioner humbly submits that due to some personal inconvenience Petitioner No.1 has resigned as Director of the Respondent No.1 Company on 25.03.2009 believing that Respondent No.3 will take care of his and his group interest in the Respondent No.1 Company.
7. That an Extra- ordinary General Meeting held on 20.12.2010 the Authorised Share Capital of the Respondent No.1 Company was increased from Rs. 5,00,000/- (Rupees Five Lakhs only) to Rs. 1,00,00,000/- (Rupees One Crore only) and accordingly filed all relevant forms with the Registrar of Companies.
8. That to meet the fund requirements of the of the Respondent No.1 Company, the Board of Directors at their meeting held on 29.03.2011 have allotted 5,00,000 (Five Lakhs) Equity Shares of Rs. 10/- (Rupees Ten Only) each to the existing shareholders of the Respondent No.1 Company. After above allotment the shareholding pattern of the Respondent No.1 Company stood as under:

S. No.	Shareholder Name	No. Of shares allotted on 29.03.2011	Post allotment shareholding pattern
1.	V. Bhaskara Rao	1,50,000	1,57,500
2.	B. Jaya Kumar	50,000	57,500
3.	Phaneesh Mudigonda	60,000	65,000
4.	C.S. Jhadav	20,000	27,500
5.	V. Sujhata	1,50,000	1,57,500
6.	B. Apsara	50,000	57,500
7.	Latha Jadav	20,000	27,500
	Total	5,00,000	5,50,000

9. It is submitted that the above allotment of shares there was never been any change in the shareholding pattern of the



Respondent No.1 Company to the knowledge of these Petitioners. However the Respondents have filed several documents showing as if there is transfer of shares and allotment of shares in the Respondent No.1 Company which the Petitioners herein are challenging in this Company Petition.

10. It is submitted that the Petitioners along with other shareholders have an oral understanding that Petitioners and other shareholders of the Company will transfer their shares to Respondent No.3. It is also agreed that Respondent No.2 will be appointed as Additional Director of the Respondent No.1 Company, accordingly on 13.09.2012 the Respondent No. 2 was appointed as Additional Director.

11. It is submitted that though the Respondent No.1 Company was incorporated for carrying on the business as stated above, it has not commenced its operations till date except the business of plantation. The Respondent No.1 Company has started investing in agriculture land and started business of plantation. It is pertinent to bring to the kind notice of this Hon'ble Bench as per Foreign Exchange Management (Transfer or issue of Security by a person Resident outside India) Regulations, 2000 Foreign Direct Investment is not allowed into the Company dealing in buying agricultural land and carrying on the business of plantation.

12. That as the FDI is not allowed into the Respondent No.1 Company and also the Respondent No.3 failed to pay the consideration for the shares, the transfer could not be completed as agreed and accordingly the Respondent No.3 returned all the share transfer forms, hence the Petitioners continue to hold the 1,15,000 shares in the Respondent No.1 Company.



13. The Petitioners humbly submits that to their utter surprise, the Respondent No. 2 and 3 filed Form No. 20 B (Annual Return) made upto 29.09.2012 showing as if on 01.09.2012 the Petitioners have transferred 57,499 shares each to Respondent No. 3 and thereby illegally reduced the shareholding of the Petitioners from 1,15,000 (One Lakh Fifteen Thousand) to 2 (Two) shares. The Petitioners further submits that as per the provisions of the Companies Act, 1956 and Articles of Association of the Company no transfer of shares can be done without receiving a duly executed transfer deed. In the present case it looks the Respondents have fraudulently transferred the shares of the Petitioners without having duly executed transfer deeds. The Petitioner challenge the respondents to produce the original transfer deeds executed by the Petitioners.



14. That Respondent No.3 has resigned as Director of the Respondent No.1 Company on 19.01. 2013. One fails to understand as to how the Respondent No.1 Company on 19.01.2013. One fails to understand as to how the Respondent No.3 who has resigned as Director of the Respondent No.1 Company on 19.01.2013 can file Form No. 20 B on 23.01.2013. The above clearly nails the fraud committed by Respondent No.2 and Respondent No.3 in illegally usurping the shares of the Petitioners.

15. It is submitted that no notice calling the Extra- ordinary General Meeting was issued to the Petitioners though the Petitioners were the shareholders of the Respondent No.1 Company. The Petitioner submits that the Respondent No.1 Company is a Public Limited Company and as per Section 174 of the Companies Act, 1956 the quorum for conducting the

General Meeting of a Public Company is five members to be personally present.

16. The Petitioner submits that even after making complaint to the Registrar of Companies the Respondent No.2 did not mend his ways and he continued with his illegal acts. It is also submitted that Respondent No.2 has filled various fraudulent Forms for actions like conducting the Extra- ordinary General Meeting for passing special resolution in their favour, for which there was no issue of any notice to inform about it to Petitioner and forms for illegal allotments of shares.

17. It is submitted that Respondent No.2 has filed illegal Form No. PAS-3 on 19.10.2014 showing as if the Respondent No.1 Company has allotted 5,09,863 (Five Lakhs Nine Thousand Eight Hundred and Sixty Three) Equity shares of Rs. 10/- each to Respondent No. 7 on 31.07. 2014 at Rs. 10/- (Rupees Ten) per share, whereas the book value as on 30.06.2013 which is the latest fraudulent audited balance sheet available as on that date filed by the Respondent No.2 the book value of the Company is Rs. 10.42/- however the fraudulent valuation report filed among with Form shows the value i.e., Rs. 8.83/- . From Reading of the valuation report dated 16.08.2014 the following discrepancies are found:

- a. The date of passing special resolution wherein the price fixed is shown a 31.07.2014.
- b. As per the alleged valuation report the discrepancies for Financial Year 2013 are detailed below:

Particulars	Shown in Valuation Report (Rs. In lacs)	As per the Audited Balance sheet filed with ROC (Rs. In lacs)
Revenue	Nil	34.84



Expenses	0.19	11.76
EBIt da	(0.19)	23.07
Depreciation	Nil	Nil
PAT	(0.19)	22.70

18. From the reading of the above it is amply clear that the Respondent No.1 Company has not obtained any valuation report for arriving the fair value mentioned has not obtained any valuation report for arriving the fair value. It is further submitted that only to cover-up the illegal acts the Respondent No.2 has obtained a fraudulent valuation report dated 16.08.2014 which is much later date of EGM and date of allotment to suit the illegal allotment of shares at a lower price than fair value in violation FEMA guidelines.

19. The Petitioners further submits that Form PAS-5 attached to Form No. PAS-3 shows that the offer letter was issued to the Respondent No.7 (the alleged allottee) on 01.08.2014 which is a day later the date of actual allotment of shares. It clearly shows that the Respondents have issued and allotted shares without giving offer letter to the Respondent No.7 and have only manipulated the allotments and created the fraudulent documents to support their illegal acts.

20. The Petitioners humbly submit that when the Petitioners approached the Respondent No.3 during July 2014 to know the status of resorting the shareholding pattern of the Respondent No.1 Company as promised by him, he informed the Petitioners that a meeting of the shareholders may be called for removal of existing board and appoint new directors to carry out the acts that are necessary for restoring the shareholding pattern of the Respondent No.1 Company. It is further submitted that the Respondent No. 3 representing the requisitionist called the Extra- Ordinary General Meeting



which was held on 19.12.2014 wherein the shareholders have removed the existing Directors. (i.e., Respondent No. 2,4 to 6) and appointed Respondent No.3, Petitioner No.1, Petitioner No. 2, Mrs. Volam Sujatha and Mr. Kameswara Rao Manchana as directors. It is further submitted that the Petitioners were appointed as Directors of the Company at the EGM held on 19.12.2014 till date the Respondent No.3 has failed to file requisite forms implementing the resolutions passed at the said meeting.

21. That without Prejudice to the above removal of Respondents 2, 4 to 6 as Directors, the Respondents No. 2, 4 to 6 are Directors of the Respondent No.1 Company and another Company viz., Nandan Naturals Private Limited. The Respondent No. 1 Company and the Nandan Naturals Private Limited has not filed its Annual Returns and Balance sheets for the years 2013-2014 till date. As per section 164 (2) (a) of the Companies Act, 2013 they are disqualified to be appointed as Directors. Despite this ROC records shows that they are Directors of Respondent No.1 Company.
22. It is well established principle that Directors of a Company are in a fiduciary position vis-à-vis the Company and must exercise their power for the benefit of the company. Between the Company and its Directors, a relationship cestui que trust exists. In this case the exercise of powers by the Directors is not for the benefit of the Respondent no. 1 Company but simply and solely for personal aggrandizement.
23. The apprehensions of the Petitioners are fortified by the conduct of the Respondents who are acting against the interest of Respondent No.1 Company and these Petitioners. Respondents would continue to misuse their position and authority and further commit acts of misfeasance, detrimental



and prejudicial to the interest of the Respondent No.1 Company and its shareholders.

24.It is submitted that though the acts of the Respondents are harsh, burdensome and oppressive and situation warrants the winding up of the Respondent No.1 Company, but duly considering that winding up would unfairly prejudice the Petitioners and other Shareholders.

25.The Petitioners further declare that it has previously not filed any application, writ petition or suit regarding the matter in respect of which this petition has been made, before any court of law or any other authority or any other Bench or the Board and not any such application, writ petition or suit is pending before any of them, except the complaint made to Registrar of Companies, who vide his letter 28.04. 2017 have directed the Petitioners to approach appropriate forum.

26.Heard Mr. S. Chidambaram (PSC), learned Counsel for Petitioners and Mr. J. Pradeep Kiran along with Mrs. C. Shilpa and Mr. V. Venkata Ravi Reddy, learned Counsels for Respondent No. 1, 2 and 3.

27.It is submitted by Respondent No.2 in his Counter that the name of the Respondent No. 1 Company has been struck off by ROC as per MCA Portal and the proof of the same has been submitted as Annexure 3. By taking the proof of the document of MCA admittedly R1 Company's name is strike off so therefore Present Company Petition is to be dismissed and not maintainable.

28.We have carefully considered the submissions of all the parties, before advertng to various prayers of the Petitioners viz rectification of Register of Members, declare the impugned EGM's held on 28.12.2012, 1.10.2013 and 31.07.2014 as illegal and void abinitio and consequently declare all the forms



filed with the ROC as illegal and void. The Respondents have submitted that the name of the R1 Company is struck off from the Register of Members as per MCA portal.

29. We are of the considered view that the prayers sought by the Petitioners relating to / to be implemented by R1 Company. However, the name of the R1 Company is struck off, therefore any direction to R1 Company cannot be implemented at this stage, therefore as prayed by the Respondent the present Company Petition is not maintainable and liable to be dismissed. Accordingly, we dismiss the present CP No. 83/241/HDB/2017

30. The Petitioners are at liberty to take up the issue of strike off the name of R1 Company with ROC in accordance with law.

31. No order as to costs.

Sd/-
Ravikumar Duraisamy
MEMBER (Technical)

Sd/-
Rajeswara Rao Vittanala
MEMBER (Judicial)

Order Reserved by the Registry on 6-9-2017

प्रमाणित प्रतिलिपि
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER *CP.No.83/241/HDB/2017*

निर्णय का तारीख
DATE OF JUDGEMENT *14-7-2017*

प्रतिलिपि तैयार किया गया तारीख
COPY MADE READY ON *6-9-2017*

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

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

