

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

CP No.21 OF 2013

(TP No.99/HDB/2016)

Date of Order: 22 .03.2017

Between:

V.Suresh Babu
S/o. Late V. Pallaiah Chowdary
Plot No. 401, Vivekananda Nagar Colony,
Kukatpalli,
Hyderabad - 50072

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

.....Petitioner

And

1. M/s. Svakrm Laboratories Private Limited
Plot.293, Vivenkananda Nagar Colony,
Kukatpally, Hyderabad-500072

2. Mr. A. Mohan Krishna
Plot.293, Vivenkananda Nagar Colony,
Kukatpally, Hyderabad-500072

3. Mr. G. Venkateswara Rao
Plot.293, Vivenkananda Nagar Colony,
Kukatpally, Hyderabad-500072

... Respondents

Counsel for Petitioner:

Shri Dr. S.V. Rama Krishna
and Shri SV Vanshi Krishna

Counsel for Respondents:

Shri R. Sivarama Krishna

CORAM:

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

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

ORDER

(As per Rajeswara Rao Vittanala, Member (J))

1. The Company petition bearing C.P.No.21 of 2013(which is hereinafter referred to as Company Petition) was filed by V. Suresh Babu (hereinafter referred to as Petitioner), before the then Hon'ble Company Law Board, Chennai Bench, Chennai (CLB). On the constitution of NCLT Bench at

Hyderabad Bench for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding it.

After the case was transferred to this Bench, it was listed on various dates for hearing i.e. 29.07.2016; 19.06.2016; 17.09.2016; 06.10.2016; 28.10.2016; 17.11.2016; 09.12.2016; 13.12.2016; 29.12.2016; 19.01.2017; 30.01.2017 and finally on 02.02.2017, the case was reserved for orders.

2. The Company petition has been filed under Section 111, 397 and 398 read with Sections 402 and 403 and other applicable provisions of the Companies Act, 1956 by seeking the following reliefs:



- a. Restraining the respondents herein from conducting and holding the proposed EGM of the First Respondent Company scheduled to be held on 08.04.2013.
- b. Consequential Restrain the Respondents from altering the capital and subsequently allotting shares.
- c. Further restrain the respondents from removing the petitioner from the board of the First Respondent Company
- d. Declaring the EGM notice dated 06.03.2013 convening the EGM on 08.04.2013 as null and void.
- e. Direct that the petitioner is entitled to representation on the board of the First Respondent Company.
- f. Director the Respondents to operate the bank account of the first company jointly with the petitioner.
- g. Restraining the respondents or their men or agents or any one claiming through them from in any manner Transferring/transmitting/alienating/ encumbering assets of the 1st of the Respondent Company.
- h. Restrain the 2nd and 3rd Respondent from exercise the voting rights in 7000 shares pertaining to the petitioner.

3. The brief facts, which are relevant for adjudication of the present issue, as set out in the Company petition, are as follows:

- a) Svakrm Laboratories Private Limited (hereinafter referred to as “the Company”) was incorporated on 09.04.2007, having its registered office at Plot No.293, Vivekananda Nagar Colony, Kukatpally, Hyderabad – 500072. The authorised Share Capital of the Company as on the date of incorporation was Rs.1,00,000/- (Rupees One Lakh only) consisting of 10,000 equity shares of Rs.10/- each. Subsequently, the authorised capital of the Company increased from Rs.1,00,000/- (Rupees One Lakh only) to Rs.2,00,000/- (Rupees Two Lakh only) by creation of 10,000 equity shares of Rs.10/- each in the EGM held on 28.02.2008. The main object of the Company is to carry on the business of manufacturers, producers, processors, makers, convectors etc.
- b) The Petitioner is one among the 1st Directors and signatory to the Memorandum of Association of the Company. He is holding 5000 equity (25%) shares on the date of filing the present petition, which is filed on 25.03.2013.
- c) Two partnerships were constituted on 05.01.2006 in the name of M/s VSK Laboratories and M/s SVAKRM Laboratories. The shareholding of the petitioner and other respondents in both the entities are: petitioner: 40%, 2nd Respondent: 15%, 3rd Respondent: 15%, S. Shahjahan; 15% and G. Ramakrishna: 15%. The shareholding pattern of the Company at the commencement of the business is as follows:-



S.No.	Name of the Allottees	No. Of Shares
1	Mr. V. Suresh Babu (Petitioner)	4,000
2	Mr. A. Mohan Krishna (R2)	3,600

3	Mr. G. Venkateswara Rao (R3)	1,400
4	Mr. Govinda Rama Krishna	1,000
	Total	10,000

d) The Petitioner along with G. Ramakrishna purchased land to an extent of 14 acres and 2 guntas, Velimenadu, Chityal Mandal, Nalgonda District, Andhra Pradesh (TS now) in the year 2006. Subsequently, the said lands were sold and transferred to both the Companies; comprising 6 acres and 37 guntas, in survey No.,406, were transferred to VSK Laboratories Private Limited and land to an extent of 7 acres and 5 guntas, comprised in survey No.405, were transferred to SVAKRM Laboratories Private Limited. Thus both the factories of VSK Laboratories Private Limited and SVAKRM Laboratories Private Limited were situated next to each other as an adjacent land.



- e) The Petitioner along with others including the respondents acquired M/s Vision Drugs Private Limited. The petitioner along with one Mr. Nageswara Rao held 58%, G. Ramakrishna held 12%, the 2nd and 3rd Respondents held 15% each. Subsequently, dispute arose in between the 2nd Respondent and said Mr. Nageswara Rao. The 2nd and 3rd Respondents hatched a plan to oust the Petitioner, who was holding major shares in both the companies viz. VSK Laboratories Private Limited and SVKRM Laboratories Ltd. (1st Respondent Company.)
- f) The petitioner alleges that the Respondents No. 2 and 3 illegally altered MOA and increased authorised capital from Rs.1 Lakhs to Rs.2 Lakhs basing on the alleged EGM held on 28.02.2008. Accordingly, the increased shares of 10,000 were allotted to V. Nageswara Rao (4000), A. Mohan Krishna (400), G. Venkatewara Rao (2600), G. Ramakrishna (3000). All these things were done without notice to the Petitioner.

- g) The Petitioner alleges that the 2nd and 3rd Respondents mismanaged the Bank accounts of the Company, and also allotted the increased shares to themselves, with a malafide intention to reduce the Petitioners holding to a miniscule fraction in VSK Laboratories Private Limited.
- h) In order to buy peace and focus on the business, the Petitioner and the 2nd and 3rd Respondents, were entered into two Memorandum of Understanding (MOU) dated 07.06.2011 relating to VSK Laboratories Private Limited and the SVKRM (R1 Company). In pursuant to the said MOU, the 2nd and 3rd Respondents transferred their entire shareholding in VSK laboratories private Limited to the Petitioner and his wife Mrs. B. Padmaja Rani and thus exited from the Company.
- i) The second MOU relates to the R1 Company was executed among A. Mohan Krishna (R3), Venkateswara Rao (R2), Suresh Babu (Petitioner) and Padmaja Rani. In terms of this MOU, the petitioner has to transfer 7000 equity shares in favour of the 2nd Respondent. It is alleged that the 2nd Respondent failed to pay sale consideration to the Petitioner for the above transfer of shares.
- j) It is alleged that the Respondents trying to sell the land and buildings to the third parties without informing the Petitioner.
- k) The 2nd Respondent issued a notice dated 01.02.2013 proposing to convene the Board meeting to be held on 09.02.2013. Again another notice was issued dated 23.02.2013 by proposing to convene a board meeting held on 02.03.2013. The petitioner attended the Board meeting on 02.03.2013. Thereafter, another notice dated 06.03.2013 was issued by the Company calling for EGM on 08.04.2013(which is the major controversy in the present case) along with a special notice under Section 284(2) of the Companies Act, 1956 proposed by the 3rd Respondent dated 05.03.2013. This EGM was proposed and



conducted for increasing authorised capital of the Company from Rs.2 Lakhs to Rs.5 Lakhs and for removal of petitioner from office of Board of Directors. The Petitioner alleges that the above action was proposed with malafide intention in order to dilute the shareholding of the petitioner to a miniscule fraction and to remove him.

1) The Petitioner alleges that a complaint by 3rd Respondent U/s 284 for his removal is unsustainable. One of the reasons for his removal was that he was holding 100% shares in VSK Laboratories Private Limited, and this is admittedly false as no one can hold in 100% in a Private Limited Company. And the other baseless reason cited for his removal was that he was obstructing road to the Company.

m) In the above circumstances, the Petitioner submit that there would be justifying reasons exist to wind up the Company U/s 433(f) of the Companies Act, 1956, but it would unfairly prejudice the interest of the petitioner, and the Company in general. The petitioner, therefore, sought the intervention of this Tribunal to pass appropriate orders so as to put an end to the acts of oppression and mismanagement on the part of the Respondent Company in order to see ease of business.

4. The 1st Respondent Company has filed a Counter dated 02.04.2013. The main contents raised in the counter are as follows:-

a) The original capital of the Company was increased from Rs.1 Lakh consisting of 10,000 shares of Rs.10/- each to Rs.2 Lakhs consisting of 20,000 shares of Rs.10/- each as per the unanimous resolution passed in EGM dated 28.02.2008. They have admitted the petitioner got 25% shareholding whereas the Respondents No.2 and 3 together hold the remaining 75% in the Company.



- b) They have denied the self-contentions of the Petitioner with regard to his major contribution to the Company. The contentions with regard to Vision Drugs have no connection with the 1st Respondent Company. The Respondents have taken all the actions raised in the petition only after duly following the procedure, and on the strength of minutes of the Board of Directors of the Company. They have denied the allegations made against the Company.
- c) The allegation that the Respondent have not sent notice to the EGM dated 28.02.2008 is totally false and baseless. In fact, the petitioner himself stated that he was holding all the account books, minute's books and all statutory registers contemplated under the Companies Act. The record shows that the petitioner himself signed the share certificates at the time of allotment and transfer.
- d) After taking over of the VSK Laboratories Private Limited by divesting the Respondent No.2 of their 90% shareholding in it, the Petitioner was became non-cooperative, and started putting hurdles in managing the affairs of the Company.
- e) Two MOUs even dated 07.06.2011 signed by all the stakeholders in both the Companies (VSK Laboratories Private Limited and R1 Company). In pursuant to the MOU, share transfer forms were obtained from Registrar of Companies on 28.03.2011, and transferred shares on 23.05.2011 itself and making necessary entries in the share transfer from as well as share certificates. The documents would show that some of the terms of the MOU were already implemented even before the MOU was executed.
- f) The allegation of the petitioner that sale consideration was not paid to him for transfer of 7000 shares is not at all correct. It is alleged that the petitioner has resorted to forgery in order to show that the payments were not paid at the time of MOU. They have contended that every term of MOU stands implemented, and they have also filed



the original MOU. The schedule-C of the said MOU relates to the petitioner herein. As per the Schedule-C, one of the conditions is that the petitioner should transfer 7000 equity shares of Rs.10/- each to A. Mohan Krishna (R2) and he was also acquired to handover all the original share certificates, Certificate of incorporation, title deeds, statutory records etc. Another condition is that the petitioner is required to maintain 25% of the shareholding in his name only, and he should also bring required funds matching 25% of the shareholding, whenever the company requires additional funds for Company's operations. It is also made clear in the MOU that in case, he became unable to bring additional funds; the 1st Part was required to bring additional funds. If the petitioner failed to bring additional funds by way of contributing shares etc, naturally Petitioner's shareholding would come down.



- g) In terms of the said MOU, the Petitioner admittedly got total controlling interest in VSK Laboratories Private Limited, and the required forms were also submitted to the ROC.
- h) The Respondents alleges that the Petitioner was playing havoc with the Respondents, after getting the benefit of mutual understanding of bifurcation of business between two groups by obtaining 100% shareholding in VSK Laboratories Private Limited, and having an additional benefit of retaining 25% shareholding in 1st Respondent Company. The Respondents No.2 and 3 has invested nearly Rs.2 crores, after taking over the majority shareholding in the R1 Company, and have constructed seven buildings, which are in finishing stage. They have also filed bank statement to show that various investments made by Respondents No.2 and 3 in the Company.
- i) Since the buildings of the Company are required to be finished within a short period, series of Board meetings were called for, but the

petitioner never co-operated. After receiving the notices of all the Company affairs, the petitioner, instead of co-operating with proposals of the Company, has adopted confrontation approach to oppose the each and every activity of the Company on frivolous grounds. The petitioner has caused hurdles to forty-foot road laid by respondents by digging a ditch in the middle of the road, though the road was laid with due approvals by the concerned authorities.

j) When the Respondents No.2 and 3 were prepared to give their properties as collateral for raising necessary loans from the financial institutions, the petitioner refused to furnish such facility.



k) As per the said MOU, the petitioner is supposed to contribute funds to the Company in proportion to his shareholding of 25%. However, he has bluntly refused to contribute anything so that the Board was compelled to call for an EGM to be held on 08.04.2013. The petitioner was given notice well in advance, and a special notice was also given for his removal, and appointment of new director. The Board has also resolved to invite the representative of ROC to attend EGM to be held on 08.04.2013, which itself would show transparency of the Company in taking decisions.

l) The Respondents state that they have offered proportionate shares to the petitioner out of increased share capital of the Company but he did not avail it by raising frivolous and baseless grounds.

m) The petitioner is estopped from raising any dispute with regard to 7000 shares as the petitioner himself has signed all the share transfer forms, share certificate possession and signed the returns filed before ROC for 2010-11, where he signed along with other Directors.

n) The respondents have filed shareholding pattern of both the Companies. However, the petitioner chose to file only returns for the year 2010-11, but failed to file the return for the year 2011-12, which

would show the correct shareholding pattern after the change. The respondents alleges that the petitioner was trying to make a mountain out of a mole by giving inter se change on the between Respondent No.2 and 3, subsequent to taking the majority shareholding in the Company.

o) They have denied the allegation of the petitioner that notice for all the meetings were not given to him. They have filed all the proof to show notices have been given to the petitioner.

5. Sri R. Sivaramakrishna, the learned Counsel for the respondents, while reiterating the various contentions raised in the reply, have further stated that they have filed C.A.No.1/2014 on 07.07.2014 by seeking to dismiss CP.No.21/2013 as vexatious and for want of necessary qualification on the basis of not having sufficient shares to move an application under Section 397/398 of the Companies Act, 1956. The learned counsel submit that the Board meeting was conducted on 09.02.2013 and some of the topics of the meeting are to discuss about non co-operation of the Petitioner in n running the affairs of the Company, increase authorised share capital and to allot shares of the increased share capital.

6. The learned counsel further submits that Board also conducted another meeting of the Company on 02.03.2013, in which the petitioner also participated. In this meeting, it was unanimously resolved to call for an EGM on 08.04.2013 with regard to increasing of capital from Rs.2 Lakhs to Rs.5 Crores divided into 50,00,000 equity shares of Rs.10/- each and to remove Shri Suresh Babu as Director and other items. Accordingly, the EGM was held on 08.04.2013, in which Mr. A. Mohan Krishna, G. Venkateshwara Rao and V. Suresh Babu were present, and it was resolved to increase the capital as proposed and Shri V. Suresh Babu was removed from the directorship of the Company and also resolved to appoint a technical Director as a director/additional director of the Company in place of Shri V. Suresh Babu. However, the removal of petitioner was suspended



pending further directions of the CLB in C.A.No.21/2013. It was also decided to allot the enhanced share capital in proportion to the existing shareholders by giving 20 days' notice, failing which, the board was authorised to offer the shares first among the remaining shareholders, failing which, any other third party, who shows interest in the welfare of the Company.

7. He further add on that on being failed to accept offer of shares of Company by the petitioner, Respondents No.2 and 3, and their family members accepted the offer by investing amount of Rs.4,99,50,000/- Accordingly, they have acquired the enhanced shares, so the percentage of the Petitioner naturally reduced to 0.01% from 25%. So the learned counsel contends that Company petition not maintainable but also lacks merits and thus sought to dismiss the petition.
8. The Respondents No.2 and 3 have filed a Memo on 02.04.2013, adopting the Counter filed on behalf of the 1st Respondent Company in CP/21/2013.
9. Dr. S.V.Rama Krishna, the learned counsel for Petitioner, while reiterating various averments made in counter, has further submitted that he has filed another C.A.No.44/2016 U/R 11 of the NCLT Rules, 2016 by seeking to declare the EGM held on 29.08.2016 and 9th AGM held on 30.09.2016 as null and void abnatio and not to give effect to any resolutions at those meetings etc. It is contended that while present case is pending before this Tribunal, he received a letter dated 05.08.2016 from the Company inviting him to attend the proposed EGM to be held on 29.08.2016 with a proposal to amalgamate the Company with Medchem Pharma Private Limited. He stated that as per rules 21 days clear notice is required to be given, however, the notice gives only 18 days. He also stated that he did not receive all the required documents. So he contends that resorting to this type of notices is in furtherance of acts of oppression and mismanagement being perpetuated against the petitioner by the respondents.



10. The learned counsel for the Respondents has strongly opposed said C.A.No.44/2016 by filing a reply to this CA. He has contended that by virtue of dismissal of CA.No.1/2013, the Petitioner ceased to be a director, and he cannot file subsequent application as he admittedly represents only less than 1% of share capital of the Company. As per Articles of Association, Regulations 40 and 41 of Table A, Schedule-I is not applicable to the Company. So any business cannot be treated as a special business and sending copies of statements, documents etc., does not arise. He contends that petitioner is making another futile effort by filing the present petition even though he could not succeed in earlier applications. It is also stated that as per Section 170 of the Companies Act, every director or a member can always visit company's premises during office hours and also can take note from the records and the Company is also enjoying in supply copies of documents. Hence, they prayed the Tribunal to dismiss this C.A.No.44/2016 also Company petition.



11. The learned counsel for petitioner has opposed the contents of reply in CA No. 44 of 16 by way of filing a rejoinder dated 18.01.2017, to it . The Learned counsel contends that 2nd Respondent is pre-judging the validity of CP No.21/2013 on his own, contrary to declare law and principles held by various Courts. The 2nd Respondent was only exposing his understanding of law in his own way for self-serving and self-righteous purposes.

12. We have heard both the Counsels and have carefully perused all the pleadings along with material papers filed in their support. We found the following main issues arise for consideration of Tribunal:-

- a) Whether the present petition is maintainable as the petitioner's holding of shares in the Company was subsequently reduced from 25% to less than 1% of share capital.
- b) Whether the petitioner was afforded reasonable opportunity to attend various meetings of the Company.

- c) Whether the petitioner was given opportunity to contribute to the enhanced share capital in proportionate to the shareholding of the petitioner.
- d) Whether the alleged acts of oppression and mismanagement on the part of the respondents are substantiated or not.
- e) If so, what is the relief the petitioner is entitled for.
13. It is not in dispute that the petitioner was holding 25% of the share capital of the Company at the time of filing the Company Petition, and it was subsequently reduced to less than 1% due to non-accepting of further shares offered by the Company. It is a settled position of law that ingredients of Section 399 to file a petition U/s 397/398 have to be fulfilled as on the date of filing a petition. Admittedly, the petitioner was holding 25% of share capital of Company and thus the petition is maintainable.
14. On being directed by the Bench, the Respondents have produced various correspondence made between petitioner and respondents on allegation of non-sending notices to petitioner and Directors Attendance Register.

We have perused various correspondence produced by respondents and found that all communications were sent to the petitioner by speed post and proof also filed to that extent. Especially, increased shares in question, petitioner was well aware of it and correspondence produced also show he was under notice of it but he used to raise one objection or other for contributing shares. In fact, as stated above, in terms of MOU in question, he is supposed to contribute funds to Company in proportionate to his shareholding. The petitioner cannot insist a special treatment in offering additional shares in question and it is part of record that petitioner was duly given opportunity to contribute additional shares, on par with other existing shareholders. The petitioner is not a stranger/new shareholder in Company as history as stated supra, shows, he was one of pillars of the Company. The petitioner cannot question the decision of the Company in allotting shares to others as he did not accept the offer made by the Company. The



petitioner cannot raise untenable grounds before contributing new shares offered. It is not the case of the petitioner that the other shareholders, who have accepted the shares of the petitioner has been given any special treatment before allotting the shares in question. It is also not the case of the petitioner that the petitioner is stranger and wanted to know financial status of Company before investing money, as stated supra; there is a lot of history for the case. It is not in dispute, rather record clearly shows, that petitioner has participated in Board Meeting in which, a decision was taken to enhance capital in question, and to remove him as Director of Company. As per law, a director/share holder of a Company is entitled for prior notice but one cannot question, in normal circumstance, merits of such decision, unless such decision taken violating all cannons of law.



15. By perusal of original Attendance Register, produced by the respondents, shows that petitioner has attended the following meetings:

- a) Board Meeting held on 02.03.2013
- b) EGM held on 08.04.2013
- c) Board Meeting held on 22.04.2013
- d) Board Meeting held on 10.06.2013
- e) Board Meeting held on 03.07.2013
- f) Board Meeting held on 04.09.2013
- g) AGM held on 30.09.2013
- h) Board Meeting held on 30.09.2013
- i) EGM held on 10.10.2013

16. The petitioner, who is at helm of affairs of another Company (VSK Laboratories Private Limited), after filing the Company Petition, is unnecessarily interfering with affairs of R 1 Company on un-tenable grounds, that too without contributing any resources to Company. The record clearly shows that the petitioner has participated in the Company's affairs and he was given reasonable opportunity for the same. The petitioner, in order to show bonafide interest in the Company, has to invest

in the Company along with others, as and when the Company needs finances. The facts mentioned above shows that the petitioner is not interested in the welfare of the Company, and on the other hand, he wanted to raise frivolous litigation raising one ground or other. The petitioner, for reason best known to him, has not contributed anything to the Company after filing the present petition except filing various applications on baseless and untenable grounds.

17. Though the Company petition is legally maintainable as on the date of filing it, he has to satisfy that the alleged acts of oppression, mismanagement not only existing as on the date of petition, he should also satisfy Tribunal that those acts continues as on the date of final hearing of the case. The Tribunal cannot lose sight of latest developments of the case while deciding a case finally. Admittedly, the petitioner shareholding of Company was drastically fell down below one percentage with effect from 10.06.2013. He has also failed to substantiate his initial allegations of oppression and mismanagement. It is not the case of the applicant that he was unreasonably deprived opportunity to participate in the affairs of the Company. The petitioner is challenging the decisions of the majority, which are taken in the best interest of the Company. The petitioner is entitled for reasonable opportunity and he cannot dictate terms to the company, especially, in case where major policy decisions like enhancement of capital, allotment of shares etc.

18. The Hon'ble CLB passed an order dated 04.04.2013 by permitting EOGM to be held on 08.04.2013, but removal of the Petitioner was directed to be kept pending.

19. The above circumstances, clearly shows that the petitioner came to the Tribunal not only with unclean hands and also failed to show any acts of oppression and mismanagement on the part of the respondent Company. Hence, the petitioner is not entitled for any relief as prayed for and



Company Petition is liable to be dismissed. CA.No.44 of 2016 is also not maintainable and it lacks merits and it also liable to be dismissed.

20. In the result, the Company Petition bearing C.P.No.21/2013 and along with CA No. 44 of 2016 are hereby dismissed. We hereby vacated the interim orders dated 04.04.2013 and also dismissed the pending CAs. No order as to costs.



Sd/-

RAVIKUMAR DURAISAMY
Member (T)

Sd/-

RAJESWARA RAO VITTANALA
Member (J)

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