

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

**CP. No. 58 of 2015
(TP No.80/HDB/2016)**

Date of order: 01 .03.2017

Between:

1. Mr. Rachakonda Siva Kumar
S/o Sivaswamy Sastry,
Aged about 54 years,
R/o H.No. 8-2-293/82/G/A,
Falt No.202, Aditya Elegance,
Road No.34, Jubilee Hills
Hyderabad – 500033, State of Telangana

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

... Petitioner

AND

1. Zetatek Engineering Systems Pvt Ltd
Regd Office at plot No. 39, Ananth Info Park,
Phase – II, Hi-Tech City, Madhapur,
Hyderabad – 500081, Telangana
2. Dr. Subba Rao Pavuluri
S/o Siva Rama Krishnaiah
Aged about 62 years
R/o Plot No.1355C
Road No.45, Jubilee Hills
Hyderabad- 500033, Telangana
3. Mr. V. Shashi Kumar
S/o K. Viayabalan
Aged 57 years
R/o 10-2-289/110/202
Shanthi Nagar
Hyderabad – 500028, Telangana

.... Respondents

Counsel for Petitioner:

Dr.S.V.Ramakrishna

Counsel for Respondents:

Mr. Y. Suryanarayana



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. Heard Sri S.V. Ramakrishna, learned counsel for the Petitioner and Sri Y. Suryanarayana, learned counsel for the Respondents.

The Company Application bearing C.P. No.58 of 2015, was filed by Mr. Rachakonda Siva Kumar, under section 59 of the Companies Act, 2013 and Sections 81,111,397,398, 399, 402, 403 read with Schedule XI and other applicable provisions of the Companies Act, 1956, by inter alia seeking to ;

- a) to declare the fake board resolutions uploaded with the Form No.MGT.14 transferring 500 shares by the 2nd Respondent to 3rd Respondent as void and illegal and violative of provisions of the Articles 17-22 of the Articles of Association of 1st Respondent Company and set aside the said Form No. MGT. 14 as illegal;
- b) To declare the allotment of 90,000 shares solely to the 2nd Respondent at the purported board meeting dated 3.9.2014 as void and illegal, and declare the Form No. PAS-3 filed by the Respondents as null and void;
- c) Order the Respondents No. 1 and 2 to convene and conduct the AGM for the year 31.3.2014 immediately as per the approved Annual Accounts at the Board Meeting held on 03.09.2014; etc.



3. The learned Counsel for the Petitioner submit that Zetatek Engineering Systems Pvt Ltd (herein after referred to as Company) was initially incorporated under the provisions of the Companies Act, 1956 on the 18th January, 2008 of the then Andhra Pradesh (now state of Telangana) under the name and style of "Zetatek Engineering Systems Private Limited" and bearing CIN U74999AP2008PTC057194.
4. The registered office of Respondent No.1 Company is at Plot No.39, Ananth Info Park, Phase-II, Hi-Tech City, Madhapur, Hyderabad-500 081, Telangana.
5. The Authorised equity share capital of Respondent No.1 Company is Rs.10,00,000/- (Rupees ten lakhs only) divided into 1,00,000 number of equity shares of Rs.10/- each. The paid up equity share capital is 10,000 number of equity shares equally subscribed by both the subscribers to the Memorandum of Association i.e. the Petitioner and the 2nd Respondent herein at 5000 shares each.
6. The main objects of the Respondent No.1 Company is to carry on the business as manufacturers, processors, converters, producers, buyers, sellers, suppliers, suppliers, stockiest, agents, merchants, distributors, concessionaries of and dealers, marketers, and maintenance and servicing of Navigation systems and calibration, inertial, measurements, systems, using dynamically tuned gyros, fibre optic gyros, ring laser gyros, and accumulators, and to designs develop and provide service and calibration of dynamically tuned gyros, fibre optic gyros, ring laser gyros, mems gyros and accumulators etc.



7. Petitioner is a qualified engineer in high technology field having wide experience and expertise in working with Defence Laboratories, R&D projects in India and abroad has established "ZETATEK" group of companies with a proprietary trademark "Zetatek" and unique logo associated with the Petitioner in India and abroad.
8. The learned counsel for the Petitioner has mentioned several instances of Oppression and mis-management, committed financial embezzlements and abusing the authority vested in the 2nd Respondent and committed various acts of serious breach of trust like fake and fabricated records uploaded by the 2nd Respondent into the Registrar of Companies/Ministry of Corporate Affairs, fake transfer of shares by Respondent No.2 to Respondent No.3 in gross violation of Articles of Association.
9. The learned counsel for Petitioner has mentioned that 500 equity shares have been transferred from the 2nd Respondent to the third party i.e. the 3rd Respondent and allotted a new Folio No.ZESPL-3. The purported transfer of shares is not at all an item of agenda and further it is a brazen violation of Articles 17 to 22 of the Articles of Association of the 1st Respondent Company. The acts of the Respondents are acts of fraud and filing of false statements into the public records of Ministry of Corporate Affairs/Registrar of Companies and liable for punishments u/s. 447 and 448 of the Companies Act, 2013.
10. The learned counsel for Petitioner has mentioned that allotment of equity shares is not at all an item of agenda discussed in the Board Meeting dated 03.09.2014.



Through this fake resolution, the Respondent No.2 has misrepresented himself as if he is holding 95,000 equity shares (including 5000 shares shown as subscriber to Memorandum of Association) and the Petitioner continue shown as 5000 shares which is fraudulently distorted shareholding pattern. The Petitioner is wilfully and fraudulently made a minority shareholder from 50% to 5% and the 2nd Respondent is shown as 95% instead of 50% shareholder.

11. Counter dated 12.11.2016 has been filed by Respondent No.2, while opposing various averments made in the Petition, has prayed this Hon'ble Tribunal to dismiss the petition and pass appropriate orders in the interest of justice.

12. In response to the above Counter filed by Respondent No.2, the Petitioner has filed a Rejoinder dated 15.12.2016

13. We have considered all the contentions raised by all the parties, and we are of the considered view that the present petition is disposed of without going into the merits of the case. Hence, we dispose of CP No. 58 of 2015 with the following directions:

- i) We hereby appoint Sri T. Hanumantha Reddy, Advocate & Senior Panel Counsel for Central Govt. & Railway Panel Advocate in CAT/HYD, H. No. 6-1-72, Sri Maha Laxmi Meadows, A-1501, Lakdikapool, Hyderabad-4 , as Chairperson to conduct Board Meetings and Annual General Meetings for the year 2013-14, 2014-15 and 2015-16 of Zetatek Engineering Systems Private Limited;



- ii) We hereby appoint Seshachalam & Co., Chartered Accountants, "Wall Street Plaza", 1-11-256, ICICI Building, St. No.1, Begumpet, Hyderabad – 16,(Contact Person: Partner Mr.K. Goutham, Mobile No.9885773725) as Auditor in the present case and his fee will be decided in consultation with the Chairperson.
- iii) The Learned Chair person is directed to fix dates and venues suitably, after discussing the issue with the petitioner and the Respondent No. 2 & 3 and give advance notices to all the concerned parties;
- iv) The Petitioner as well as the Respondent No. 2 and 3 are directed to extend full co-operation to the Learned Chairperson and Auditor to discharge their duties;
- v) The learned Chair person is also directed to take all relevant records and make available those records to the Respondent No. 2 & 3;
- vi) The Learned Chairperson's fee is fixed at for Rs. 25,000/- for Board Meetings and Rs.50,000/- to Annual/Extra Ordinary General meetings which is to be borne by Respondent No.1 Company apart from other expenses;
- vii) We direct the Auditor to take up auditing of all the relevant records.
- viii) We direct the Petitioner and the Respondents to make available all the records as required by the said Auditor as and when called for.
- ix) The Petitioner as well Respondents are entitled to have an access to records obtained by the auditor and also the auditor is directed to furnish the copies



as requested by the parties if the copies are few in pages. If they are in voluminous the parties are entitled to inspect those documents.

- x) The Learned Chairperson and Auditor are directed to complete the above exercise within a maximum period of three months from the date of receipt copy of this order;
- xi) Both the Chairperson and Auditor are entitled to take any professional service/assistance required by them depending on the nature of their assignment; and they have to minute/record all the proceedings and furnish copies to both the parties;
- xii) Both the Learned Chairperson and Auditor should make all efforts to settle the issue amicably;
- xiii) The Respondents are also directed to co-operate with the newly appointed Auditor, if any services are required by the C.A.
- xiv) The Registry of NCLT is directed to forward a copy of this Order to the Learned Chairperson and Auditor.

14. With the above directions, CP No. 58 of 2015 is disposed of by granting liberty to file fresh application.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (J)

V. Anna Poorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68

