

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

C.A.No. 1 of 2014

In

CP No. 19 of 2014

(TP No. 109/HDB/2016)

Date of Order: 18.11.2016

Between:

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

1. Lokankara Realtors Private Limited

Having its Regd. Office at

4-C, 30-15-190, Founta Plaza, Daba Gardens,

Visakhapatnam – 530020

2. Ramakoteswara Rao Paruchuri

59, Rajaratnam Apartments

TTK Road, Alwarpet,

Chennai – 600018



3. Geeta Rao Paruchuri

59, Raajaratnam Apartments

TTK Road, Alwarpet

Chennai – 600018

4. Vijai Gopal Pudota

8-3-982/5/F/103, AnuradhaApts,

Sri Nagar Colony, Yella Reddy Guda,

Hyderabad – 500073

5. Lakshminarayana Murthy Adapaka

2-24, Medapadu, Samalkota,

Andhra Pradesh – 533434

6. Mr. Suneel Vohra
A-138, Shivalik Colony
Malviya Nagar
New Delhi – 110017

.... Applicants

AND

1. Mr. K. Prabhakar Reddy
H.No. 231A/C, MLA Colony, Road No. 12,
Banjara Hills,
Hyderabad – 500034

2. Mr. K. Ravikanth Reddy
R/o. 8-2-293/82/L/231-A/C, Road No.12 Extn.,
MLA Colony, Banjara Hills
Hyderabad – 500034

3. Mr. M. Damodaran
Practising Company Secretary
Old no. 57, New No. 109, Kamalam's Park,
2nd Floor, R.K. Mutt Road, Near Mandavelli Market
Mandavelli, Chennai – 600028



4. The Registrar of Companies, Hyderabad
2nd Floor, Corporate Bhawan
GSI Post, Bandlaguda
Nagole, Hyderabad – 500068

..... Respondents

Counsel for the Applicants:

Mr. R. Rajesh

Counsel for Respondent 1 and 2:

Mr. Arvinth Pandian

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 CP was originally filed before the Hon'ble Company Law Board, Chennai. Upon the constitution of NCLT Bench at Hyderabad for the cases pertaining to the states of Telangana and Andhra Pradesh., the CP is transferred to the Hyderabad Bench of NCLT. Hence, we have taken the case on records of the Bench and deciding it.
2. Pursuant to the filing of said CP 19 of 2014, the respondent Nos. 1 to 6 of the CP have filed the present CA No. 1 of 2014 under Regulation 17 & 44 of the Company Law Board Regulations, 1991 R/w with Companies Act 1956/2013 and its Rules by declaring that the Respondents/Petitioners are not shareholders/members of the Company and, thus the CP itself was not maintainable u/s 397/398 of the Companies Act, 1956 and thus they have sought to dismiss the CP itself as not maintainable.

3. Heard Sh. R. Rajesh Learned Counsel for Applicants(Respondents) and Sh.Arvinth Pandian, Learned Senior counsel for Respondents (Petitioner) No. 1 & 2.



4. The Learned Counsel for the Applicants submits that the share capital of the Lokankara Realtors Private Limited (Respondent No. 1 of CP), which is referred to as Company herein under, is Rs. 1 lakh divided into 10000 equity shares of Rs. 10 each. Applicant Nos. 2, 3 and 4 are holding 4,900, 5000 and 100 shares respectively in the company constituting 100% of the paid up share capital of the company. He further submits that Applicant No. 2,4, 5 and 6 are only the present Directors of the Company. He further contended, in order to file a petition u/s 397/398 of the Companies Act, 1956, a person is required to be a member of the Company and as per Section 41, a person, who is a subscriber to MoA/AoA or a person whose name is entered in Register of member of the Company will be considered to be a member of the Company. Thus, he contends that the Respondents are neither subscribers nor their names are registered in the Register of members of the Company. He further contended that the Respondent No. 1 and 2 were appointed as Additional Director on 12.12.2012 u/s 260 of the Companies Act, 1956 and they ceased to be Directors with the effect from 30th September, 2013. Therefore, he contends that the Respondents No. 2 and 3 have no role/locus-standi in the affairs of the company thereafter. However, the Respondent Nos. 1 & 2 are alleged to have conducted a Board meeting

on 29.11.2013 in which the shares of the Applicants herein were transferred to the Respondent No. 1 & 2. The Learned Counsel further submits that since the Respondents No.1 & 2 ceased to be Directors of the Company, they have no right to conduct any meeting and thus all the proceedings conducted by them on 29.11.2013 are illegal and the same was questioned in the main CP. He also relied upon two judgments in support of his case which are P Natarajan v Central Government and Others [2004 60 CLA 274 (Mad)] and Praveen Shankaralayam Vs. M/s Elan Professional Appliances Pvt Ltd & Others (CP No. 04/ND/2016). Hence, he submits that Respondents No.1 and 2 failed to satisfy the basic eligibility condition as mentioned above to file the Company Petition and thus it is liable to be dismissed.



5. Sh. Arvinth Pandian, Learned Senior Counsel for Respondent No. 1 & 2 has opposed the contention of the Applicants by filing a detailed counter dated 31st Oct, 2014 by denying the allegations of the Applicants. He has specifically denied that the Respondent No.1 & 2 ceased to be Directors of the Company and asserted that the transfer of shares effected during the Board meeting of the Directors held on 29th Nov, 2013, which is legal valid and legally enforceable. He further denied that the Applicants Nos. 2,4 5 and 6 have been appointed as Directors at the alleged EGM held on 30th Sept, 2013. Therefore, he asserts that the Respondent Nos.1 & 2 can maintain the CP since they hold 90% of the paid-up capital of the Company and the issue cannot be decided in the

present CA and the nature of issue requires to decide the main Company petition itself.

6. It is not in dispute that the Respondent Nos. 1 & 2 are additional Directors for some time, even according to the contentions of the Applicants but they contend that their tenures were not extended further as per Section 260 of the Companies Act, 1956. However, the contention of the Respondents that they are holding 90% of the paid-up share capital of the Company is required to be examined in the Company petition so as to maintain the Company Petition.



7. It is to be noted that Respondents No.1 and 2 have filed the CP by interalia seeking a direction to remove Respondent Nos.(Applicants herein) 2, 4, 5 and 6 from the Directorship of the Company, etc and alleged several acts of oppression. Hence, whether the Applicants or Respondents are Directors or not and, whether the shares in question were transferred to the Respondents(Petitioners)or not and whether EGM or AGM were held or not are the issues to be adjudicated in the main CP so as to decide the rights of both the parties. Hence, we are of the considered opinion that the present Company Application is premature to hold that the Respondents do not hold the prescribed qualification to maintain the CP. The nature of the issue requires adjudicating the main CP itself as contended by the Learned Senior Counsel for the Respondents and not the present CA. Ultimately, both the Learned

counsels agreed that the main Company petition itself can be taken up for final hearing by fixing a date for the same.

8. In view of the above facts and circumstances of the case, the CA is disposed of by posting the main CP itself for final hearing on 21.12.2016.

And the parties are directed to complete pleadings by the next date of hearing.

Sd/-

RAVIKUMAR DURAISAMY

Member (Tech)



Sd/-

RAJESWARA RAO VITTANALA

Member (Judl)

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

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