

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

COMPANY APPELLATE JURISDICTION

Company Appeal (AT) No. 149 of 2017

(arising out of common order (s) dated 31st March, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in Company Petition No. 66/2016 and T.P. No. 14/HDB/2016)

IN THE MATTER OF:

Shri Dundoo Shirish & Ors. ... Appellants

v.

Shri T. Nand Kishore Singh & Ors. ... Respondents

With Company Appeal (AT) No. 166 of 2017

Sri. D Savan Kumar & Ors. ... Appellants

v.

M/s. The Aryan Industries Pvt. Ltd., Ors. Respondents

and Company Appeal (AT) No. 191 of 2017

Shri T. Nand Kishore Singh ... Appellant

v.

M/s. The Aryan Industries Pvt. Ltd. & Ors. ... Respondents

Present: For Appellant in CA(AT)149/2017: - Shri Yogesh Ravi, Advocate.
For Appellant in CA(AT) No. 166/2017: - Shri Pradeep K Mittal and Shri Mayank Sharma, Advocates

For Appellant in CA(AT) No. 191/2017: - Shri Ananya Ghosh, Advocate.

For Respondent No. 6, 9 and 16 in CA(AT)149/2017: - Shri Arjun Singh and Shri Gaichang, Advocates

For Respondent No. 17 to 22 in CA (AT) 149/2017: - Shri Abishek Jebraj, Advocate.

For Respondent No. 25 to 37 in CA(AT)149/2017 and for Respondent No. 18 to 30 in CA(AT) No. 191/2017: - Shri Pradeep Kumar Mittal and Mr Mayank Sharma, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These cross appeal (s) have been preferred by Appellant - Shri T. Nand Kishore Singh & Ors. [Petitioners before the National Company Law Tribunal (hereinafter referred to as Tribunal)] and Appellant - Shri Dundoo Shirish & Ors. and Appellant – D. Savan Kumar & Ors. (hereinafter referred to as Respondents) against order dated 31st March 2017 passed by the Tribunal, Hyderabad Bench in Company Petition No. 66/2016 and T.P. No. 14/HDB/2016.

2. The Petitioners and others preferred the Company Petition under Section 235, 237, 397 and 398 read with Schedule XI of the Companies Act, 1956 alleging acts of 'oppression and mismanagement' against Respondent, *inter-alia*, seeking for following directions: -

(i) To appoint Inspectors to investigate into the acts done or continued to be done by persons claimed or claiming to be 'Directors' of the 1st Respondent Company, with regard to (a) filing of Form No. 32; (b) filing of Form No. 18; (c) Transfer of 2340 shares in favour of (Late) Shri Dundoo Srinivas; (d) Consequential Transmission of 2340 shares in favour of Shri Dundoo Shirish, the 4th Respondent and (e) Removal of Soap Unit etc.

(ii) Restoration of Soap Unit and electrical installations and re-fixing of machineries by 4th to 8th Respondents enabling 1st Respondent to commence production;

(iii) To order forfeiture of 2340 shares of 1st Respondent company as transfer and subsequent transmission was ultra-vires the Articles of Association; and

(iv) To 'lift or pierce' the 'corporate veil' of the 1st Respondent company and declare that the partnership of M/s. Sri Venkateshwara Oil Mills, is the only legal entity, applying the principles laid down in "*Mr A. Saloman v. M/s. A Saloman & Co. Ltd*" (1897) All England Law Reporter.

3. The Tribunal while held that the Company Petition itself is not maintainable and barred by laches and limitation but exercised

power conferred by Section 402 of the Companies Act, 1956 and passed the following order: -

"29. In the light of the above discussion of case, we are of the considered opinion that though Company petition itself is not maintainable and also barred by laches and limitation, we pass the following directions, in exercise of powers conferred on CLB/Tribunal u/s 402 of Companies Act, 1956, r/w Section 242 of Companies Act, 2013 and in the light of law as mentioned above, with a view to bring an end the matters complained of:

1. We do hereby declare and accept the shareholding of Aryan Industries Private Limited consisting of the following Members:

Sl. No.	Name	No. of shares	Amount (Rs)
1.	Dundoo Shirish	2270	2,27,000
2.	Smt. Dundoo Somalakshmi Tayaramma	50	5,000
3.	Dundoo Rameswara Rao	510	51,000
4.	Dundoo Vikas & Dundoo Akhil	510	51,000
5.	Dundoo Madan Mohan Rao	300	30,000
6.	Thakur Singh	400	40,000
7.	Narayan Singh	225	22,500
8.	Ram Singh & Usha	150	15,000
9.	Smt. D Kesar Bai and Mrs. Usha	150	15,000
10.	Manohar Singh	125	12,500
11.	Pavan Kumar Singh	200	20,000

12.	Smt. Amy Edi Chenoy	55	5,500
13.	Yadgar F.S. Chenoy & Smt Gulbanoo Y Chenoy	55	5,500
Total		5000	5,00,000

2. We do hereby declare that the property registered vide sale deed dated 12.1.1955 bearing Registration No. 70 of 1955 admeasuring 20,850 sq. yards measuring Municipal No. 108 (old) and 6-1-15, 6-1,23 to 6-1-26(New) Bhoiguda, Secunderabad, which is in possession of company since 1955 is the absolute property of the 1st Respondent company.
3. We do hereby supersede the existing Board of Directors and appoint the following persons as Chairman and Directors of Aryan Industries namely Shri P.A. Choudary, IRS, Chief Commissioner of Income Tax (Retd) Srinagar Colony, Hyderabad Mob: 9440824455 as Chairman and following persons are Directors namely, (1) Sri K Suryanarayana, Advocate, 171, Ritesh Premier Towers, Ground floor, Vasavinagar, Opp: Karkana Police Station, Secunderabad, (2) Sri P. Dinakara Rao, CGM (Retd) State Bank of Hyderabad, Begumpet, Hyderabad Mob. 9849376477; (3) Shri M Subrahmanyam, Executive Director (Retd) Hyderabad Stock Exchange and PCS Mob. No. 9849652290 and (4) Sri A Viswanadha Rao, CA, Narayanaguda, Hyderabad, Telephone No. 66887734.
4. The above Board of Directors are directed to take possession of the said property and take appropriate steps for 'public action' including 'e-auction' of the said property and distribute its proceeds in following manner to claimants basing on the said shareholding pattern shown at para 29(1) above:
 - (a) Firstly, to all undisputed claimants as per the above shareholding pattern;
 - (b) Secondly to successors in proportion to their shareholding, on being produced supporting documents and affidavits/orders of successions etc. and after being satisfied about their bonafide claim;
 - (c) And keep the remaining amount in Bank Account to apportion its later on being shown sufficient

proof about their succession to above shareholders of said list;

(d) The Board of Directors are entitled for reimbursement of expenses, and their remuneration/fees incurred to carry out public action from the previous Board of Directors, who are directed to bear expenses.

- 5. All expenses and remuneration/fee of Board of Directors are to be borne by the existing Board of Directors and they are entitled for reimbursement from final proceeds of public auction of the property from new Board of Directors.*
- 6. The Board of Directors are entitled for fee as follows:-*
 - (i) Chairman of Board is entitled for Rs.50,000/- for each Board Meeting*
 - (ii) Directors are entitled for Rs.40,000/- for each Board Meeting.*
- 7. The Board of Directors are entitled to take any professional service required to carry out public action;*
- 8. All the parties to the issue are directed to extend full cooperation to the newly constituted Board of Directors in discharging their duties assigned by the Tribunal.*
- 9. The Board of Directors are entitled to seek any clarification (s) from the Tribunal by filing appropriate company applications;*
- 10. We hereby dismiss all pending Company Applications including recently filed CA No. 76 of 2016 filed by B Uma Maheshwara Rao and 10 others and also vacate all interim orders if any passed and still in force.*
- 11. The Registry is directed to communicate the copy of this order to the Chairman and Directors mentioned above.*
- 12. With the above directions, the C.P. No. 66/2006 (TP No. 14/HDB/2016) is disposed of.*
- 13. The new Board of Directors are directed to carry out the above directions as expeditiously as possible.*

No order as to costs.”

- 4. Both the Petitioners and Respondents are aggrieved against the aforesaid observation and direction at para 29 of the impugned*

Order as according to them the direction issued by Tribunal is illegal and without jurisdiction.

5. The Petitioners pleaded that they formed a partnership firm on 27.8.1943 bearing name and style of "M/s. Sri Venkateshwara Oil Mills" along with predecessors of 4th to 6th and 9th to 12th Respondents. The partnership firm with its own funds had purchased the lands and buildings. The said partnership firm floated 1st Respondent company - 'M/s Aryan Industries Private Limited' (1st Respondent before the Tribunal) under the Companies Act, 1913. It was alleged that the company never went into production and the fact of creating corporate identity was only to mobilise loans from the Andhra Pradesh State Financial Corporation Limited and thereby, the company became defunct since 1963.

6. It was further alleged that in order to clear SFC loans, the company leased out its plant and machineries along with land and buildings to 'M/s. Thungabhadra Industries Limited' through Official Liquidator, Hyderabad.

7. While the number of shares in favour of one or other petitioner has been shown, it was alleged that the 4th to 6th Respondents of the Company Petition were illegally managing the affairs of the company and had taken away all its records in their house without following

any procedure laid down under the law and also changed the registered office of the company.

8. It was also alleged that the 1st to 4th petitioners had made an application to the company for transmission of the shares by letter dated 9th September 1982 through Registered Post with Acknowledgement Due but no reply was received, though requisite documents along with Death Certificates of the original shareholders were forwarded.

9. It was further alleged that 4th and 5th Respondents have forged the signature of the deceased father Shri Dundoo Srinivas and Form No. 32 was antedated as 7.6.1998 and filed with the Registrar of Companies, Hyderabad.

10. According to the Petitioners during the tenure of late Shri Dundoo Srinivas as Director of the company, there were illegal transfer of 2300 shares without exercising the rights of pre-emption which was claimed by 4th and 5th Respondents, though they were not entitled for transmission of shares.

11. It was further alleged that the 4th Respondent illegally inducted the 6th and 8th Respondents as Directors, though they were strangers to the company.

12. A number of illegal allegation were made against the Respondents, all of which related to action taken between the year 1981 and 1985 or earlier period.

13. A counter reply was filed by the Respondents, *inter alia*, pleading that the 4th Respondent kept all the records of the company in his personal capacity apart from the records of 'Sri Venkateshwara Oil Mills'. It was also pleaded that a suit bearing O.S. No. 64 of 2002 was filed before the 3rd Senior Civil Judge, City Civil Court wherein *ex-parte* order were passed prohibiting 10th and 13th Respondents to function as directors, they being strangers to the company. However, after hearing the parties, the Court finally referred the dispute to the Arbitrator. It was further pleaded that the petitioners are agitating in respect of the affairs of 'The Aryan Industries Private Limited', which does exist.

14. It was brought to the notice of the Tribunal that O.S. No.58 of 1992 was filed before the 3rd Additional Judge, City Civil Court, Secunderabad in which both the parties were involved which was dismissed on 23.1.2006. Another O.S. No. 529/2005 between the parties was moved before the City Civil Court for reference to the Arbitrator, which was allowed.

15. A third O.S. No. 1150/2005 was pending before the Civil Court seeking interim measure to safeguard the properties of the Company

under Section 9 of the Arbitration and Conciliation Act, 1996 in which order was passed on 3rd March 2009 appointing Hon'ble Mr. Justice M.H.S. Ansari, a former judge of Andhra Pradesh High Court as the Arbitrator. Other facts were also highlighted by Respondents with request to dismiss the petition on the ground of delay, laches and limitation.

16. The main plea taken by the petitioners is that once Company Petition held to be not maintainable and barred by laches and limitation, as held by Tribunal, the Tribunal has no jurisdiction to pass order under Section 402 of the Companies Act, 1956 superseding existing Board of Directors with directions to sell entire company's property rendering existence of the company meaningless.

17. From the impugned Order it is clear that the Tribunal has not decided the case on merit in regard to allegation of 'oppression and mismanagement', and held that the petition is not maintainable, being barred by limitation as also delay and laches. Once such finding is given, the Tribunal has no jurisdiction to issue any direction nor can exceed its jurisdiction by giving extraordinary direction to supersede the existing Board of Directors or to sell the entire company's property rendering the company's existence meaningless. For the reasons aforesaid, the direction given by

Tribunal in its impugned order dated 31st March 2017 cannot be upheld.

18. The Petitioners while pleaded that during the pendency of the Company Petition some of the original Petitioners have expired and their wives or daughters have been brought on record, the impugned order has been challenged on the ground that finding of the Tribunal that the petition is barred by limitation and delay and laches is not based on record.

19. From a bare perusal of the Company Petition, it would be evident that all alleged acts of 'oppression and mismanagement' have been alleged by Petitioners in respect of the acts between the year 1963 to 1998. The Company became defunct since 1963 is the allegation. The other allegation is that the Will was executed in respect of the share certificates on 4th April 1979 and another Will is stated to have been executed on 28.3.84. The alleged change of shares stated to have been made on 3.1.94 and forged signature of late Shri Dundoo Srinivas alleged to be committed on 7.6.98 in Form no. 32. As all the allegations relate to the year 1963 to 1998, we hold that the Company Petition preferred by petitioners in 2006 is fit to be rejected on the ground of delay and laches which has not been explained by the Petitioners.

20. However, we agree with the submission as made on behalf of the Respondents that the Tribunal while held that the petition was not maintainable, exceeded its jurisdiction by giving certain direction at paragraph 29, as quoted above.

21. For the reasons aforesaid, the impugned order dated 31st March 2017 insofar it relate to paragraph 29 wherein certain observation has been made and direction has been issued by Tribunal are set aside. The Company Petition is dismissed having filed after long delay and laches. Both the appeals stand disposed of with aforesaid observations. However, in the facts and circumstances of the case there shall be no order as to cost.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI

23rd August, 2017

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