

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

[Arising out of Order dated 26.10.2017 in C.P No. 40/2011 (TP No. 50/HDB/2016) of National Company Law Tribunal, Hyderabad Bench]

Company Appeal (AT) No. 20 of 2018

IN THE MATTER OF:

**1.M/s. Hyderabad Pollution Controls Limited
90/G, Phase – I, IDA, Jeedimetla,
Hyderabad – 500 855** ... Appellant No.1

**2.S.G.Nair
S/o Late Sri.Shankaran Nair
Aged about 66 years
Occu: Managing Director of
Hyderabad Pollution Controls Limited
90/G, Phase – I, IDA, Jeedimetla,
Hyderabad – 500 855** ... Appellant No.2

**3.G.Ravi Shankar
S/o. Sri S.G.Nair
Aged about 37 years
Occu: Director of
Hyderabad Pollution Controls Limited
90/G, Phase – I, IDA, Jeedimetla,
Hyderabad – 500 855** ... Appellant No.3

**4.G.Parameswaran Nair
S/o. Sri.S.G.Nair
Aged about 34 years
Occu: Director of
Hyderabad Pollution Controls Limited
90/G, Phase – I, IDA, Jeedimetla,
Hyderabad – 500 855** ... Appellant No.4

**5.Geetha G.Nair,
W/o Sri. S.G.Nair
Aged about 60 years
Occu: House-hold-affairs
Hyderabad Pollution Controls Limited**

**90/G, Phase – I, IDA, Jeedimetla,
Hyderabad – 500 855**

... Appellant No.5

Versus

**1.S.Radhakrishnan
S/o Shankaran Nair
Aged about 61 years
Occu: Not known
No.83/B, Vengal Rao Nagar,
Hyderabad – 500 038**

...Respondent No.1

**2.V.Thara
W/o S.Radhakrishnan
Aged about 51 years
Occu: Not known
No. 83/B, Vengal Rao Nagar,
Hyderabad – 500 038**

...Respondent No.2

**3.SGN Air System Pvt. Ltd.
No. 83/B, Vengal Rao Nagar,
Hyderabad – 500 038**

...Respondent No.3

**4.SGN Air System,
No. 83/B, Vengal Rao Nagar,
Hyderabad – 500 038**

....Respondent No.4

Present:

For Appellant : Mr.K. Rajendra and Mr. Saurabh Jain, Advocates

**For Respondents : Mr. Virendra Ganda, Sr. Advocate with Dr. S.V. Rama
Krishna, Advocate, Mr. A. Mitra, Ms. Shreya Jain, for R1
and R2
Mr. Abhindra Maheshwari with Mr. Samarah Arora,
Advocate for R3 and R4.**

J U D G M E N T

(24th January, 2020)

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The present Appeal has been preferred under Section 421 of the Companies Act, 2013 against impugned order dated 26th October, 2017 passed under Sections 397, 398, 402,403, and 237 of the Companies Act, 1956 by the National Company Law Tribunal, Hyderabad Bench. The Tribunal equally divided the share between the two shareholders. The Appellants have sought following reliefs :

a) To set aside the order dated 26.10.2017 in C.P No.40/2011 (TP No. 50/HDB/2016) passed by the Hon'ble NCLT, Hyderabad Bench as illegal and bad in law and pass such other or further orders as may be deemed fit and proper in the interest of justice.

b) To suspend/stay the order dated 26.10.2017 in C.P No. 40/2011 (TP No. 50/HDB/ 2016) passed by the Hon'ble NCLT, Hyderabad Bench pending disposal of the appeal supra.

2. The Appellants submit that as on 26.02.2007 the Appellant No.2 and his family members were holding 42% shares of the Company and the Respondent was holding 28 % shares of the Company. The Appellant contends that Mr. N.A. Nayar owned 30% shares of the Company out of which he sold 16% to the Appellant and 14 % to the Respondents. Share transfer forms were executed on 27.02.2007. The Appellant submits that the Respondent with *mala-fide* intentions had stolen in collusion with

Mr. N.A. Nayar, the executed share transfer deeds, other documents, securities and records of the company which were in safe custody in the company's office. Thereafter as stated by the Appellant the Respondent blackmailed the Appellant to make him 50% stake holder of the Company, using the share transfer documents as his bargaining chip. The Appellant No.2 further submits that under the fear he had unwillingly signed papers advanced by the Respondents on 08.04.2010 which he realized later has new set of shares certificates and share transfer agreements illegally fabricated by Respondent in collusion with Mr. N.A. Nayar.

3. The Appellants submits that in the month of June, 2010 he recovered the original declaration papers dated 27.02.2007 signed by Mr.N.A. Nayar and the Respondents agreed to the actual transactions dated 27.02.2007. The Appellant No.2 states that the Respondent transferred 8% share to the petitioner and claims that Respondent has admitted the same and hence the Respondent's shareholding is 34%. The Appellant No.2 introduced reforms in the company by which all the documents signed by the Respondent were required to be jointly signed by Appellant. There by taking away the absolute freedom and access enjoyed by the Respondent.
4. The grievance of the Appellant is that the Respondent have fictitiously used the transfer agreement dated 08.04.2010 to claim 50% stake in the

company. The Appellant further submits that NCLT proceeded to declare the fictitious agreement dated 08.04.2010 as valid without any ruling on maintainability issues and despite the agreement being under challenge in Civil Suit, gives a ruling contrary to the pleadings, different from prayer directing 50 : 50 share ratio without considering that the Authenticity of the share agreement was in challenge in Civil Court. The Appellant further submits that NCLT cannot usurp the exclusive jurisdiction of a Civil Court and grant that the agreement is valid in a summary proceeding.

5. The Respondent submits that the contention of the Appellant is baseless. He further points out that the Appellant's correct age is 72 years which bars him from becoming Managing Director in terms of Section 196(3)(a) unless approved by way of a special resolution with the support of 3/4th majority of shareholders.
6. The Respondent submits that the contentions made in the affidavit given by the Appellant that he is the Managing Director of the 1st Appellant is baseless and vague because Managing Director tenure is only for 5 years and 2nd Appellant was appointed as a Managing Director on 1st August, 2010 and his term ended long back on 31st July, 2015. The 2nd Appellant has completed his term and he is no longer Managing Director of the 1st Appellant company. He further states that the AGM meeting was held on 16th September, 2010 and thereafter no AGM meeting has taken place so far hence, the 2nd Appellant ceased to be director of the 1st

Appellant Company therefore the affidavit furnished by the Appellant No.2 is false and cannot be considered as valid affidavit.

7. The Respondent also submits that serious violations and fabrication were found during inspection by Regional Director (SER), Ministry of Corporate Affairs at Hyderabad and that the Appellant failed to reply to the notice given and instead filed a Writ in High Court of Judicature at Hyderabad. The Respondent also submits that they only filed 'ex-parte docket orders' dated 7th May, 2014 obtained from a Vacation Court in O.S. No. 605 of 2014 and not the subsequent detailed order final orders and that the Selective filing of 'ex-parte docket orders' and suppressing the final orders from the knowledge of this Hon'ble Appellate Tribunal is an attempt to willfully mislead this Hon'ble Appellate Tribunal. The Respondent also submits that the criminal charges filed by the Appellant against the Respondent is dismissed by the Hon'ble High Court and Hon'ble Supreme Court.
8. Shareholding pattern of the Appellate Company is not disputed before 27.02.2007. The Appellant and his group held 42% shares and the Respondent and his group held 28 % share. Mr. N.A. Nayar and his group held 30% share. The dispute arose when Mr. N.A. Nayar wanted to quit from the company by selling the shares in the company to both the Appellant as well as Respondent. Transfer of shares takes place on 27.02.2007 by transferring all the shares of Mr. N.A. Nayar and his group to the Appellant as well as the Respondent in such a way so as to

maintain balance between two brothers. When a dispute regarding share transfer of said Nayar and his group arose, an agreement for transfer of shares dated 08.04.2010 was executed by and between Mr.N.A.Nayar , S.G. Nair, S. Radhakrishnan. The Appellant raised objection about the said resolution dated 27.02.2007 and agreement dated 08.04.2010. The Appellant alleged that the agreement was signed by him under coercion and depression. There were two suits filed questioning the transfer of shares agreement dated 08.04.2010. The first suit got dismissed thereafter another suit was filed by the Appellant for the same cause of action as raised in the earlier suit.

9. The CLB has admittedly passed an interim order dated 18.05.2011 when Company Petition was filed before them apprehending Oppressive actions on the part of Appellants. The CLB vide its order directed the Appellants to maintain status-quo with regard to shareholding pattern and share capital. A contempt petition was further filed against the Appellant by the Respondent on violation of the said order. The Appellant has further without making any effort to settle the issue and without taking permission of the Tribunal has taken several actions including transfer of shares, removal of the 1st Respondent as Director of the company etc. When the CLB passed an order, the Appellant company is not supposed to take any action adversely affecting the interests of the Respondents. Therefore, action taken by the Appellant, contrary to said interim orders are declared illegal.

10. The Respondent has rightly submitted that in anticipation of amicable settlement of the issue, he has performed his obligation under the proposed settlement i.e. by transferring the shares, agreeing to appoint the sons of the 2nd Respondents as directors etc., as mentioned above. The Appellants have in this regard never transferred the consideration amount of Rs.2.5 crores. The Appellants have also not shown any substantial evidence for the transfer of shares. Moreover such transfer of shares cannot be done without the permission of the then CLB as interim orders of CLB was under operation.

11. These various actions taken by the Appellant as stated Supra clearly shows that 2nd Appellant is resorting to various acts of Oppression and Mismanagement in the affairs of the company so as to prejudice the interest of the Respondent and his group. The agreement dated 08.04.2010 is declared to be legal and the same is binding on all the parties concerned. The contentions raised by the second Appellant against the said agreement of transfer of shares are liable to be rejected. As mentioned supra both the parties got shares of Mr. Nayar, as per the said agreement. Both the parties got 50% share holding of the company as given in the said agreement. The subsequent transactions alleged to have been made by the Appellant, as explained supra, are declared to be illegal and liable to be set aside.

12. Moreover, the Respondent is stated to have been removed from the post of director. Appellant has failed to follow the process of law in the removal of the Respondent from the post of director of the Company.

13. The affairs of the company are being conducted in a manner prejudicial to Respondents herein. The Appellant has raised several frivolous litigations by misusing process of law and has committed several acts of Oppression and Mismanagement. The Appellant has acted contrary to the interim orders passed by the CLB. Therefore, after going through the submissions of both the parties and perusing documents on record we uphold the judgement of NCLT and accordingly dismiss the present petition. Interlocutory Application, if any, stands disposed off with above observations. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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New Delhi