

NATIONAL COMPANY LAW APPELLANT TRIBUNAL**NEW DELHI****COMPANY APPEAL (AT) NO.315 OF 2018**

(Arising out of Order dated 04.09.2018 in TCP 163/2016 (CP/23/2015) passed by National Company Law Tribunal, Single Bench, Chennai)

IN THE MATTER OF:**Before NCLT****Before NCLAT**

Mrs Arti Meenakshi Muthiah
W/o Mr Tarun Ghai,
4th Floor, Saikripa Apartment,
No.5, Sundaram Salai,
Greenways Road,
Chennai 600028

Petitioner

Appellant

Vs

1. MCTM Global Investments Pvt Ltd
No.761, Anna Salai,
Chennai 600002

1st Respondent1st Respondent

2. Mrs Kamala Muthiah,
Bedford House,
No.5, Raja Anna Salai,
Purasawalkan Road,
Chennai 600084

2nd Respondent2nd Respondent

3. Mrs Nandini Valli Muthiah,
Bedford House,
No.5, Raja Anna Salai,
Purasawalkan Road,
Chennai 600084

3rd Respondent3rd Respondent

4. Ms Gomathy Subramanian,
No.48, Sathyadev Apartment,
MRC Nagar,
Chennai 600028

4th Respondent4th Respondent

Mr.Nikhil Nayyar, Sr.Advocate, Ms Priyadarshini N, Mr. Divyanshu Rai, Advocates for appellant.

Mr. Santhanan Krishnan, Ms Namitha Mathews, Mr. Jayanth Vishwanathan, Mr. Pulkit Malhotra, Advocates for Respondent.

JUDGEMENT
(11th June, 2020)

Mr. Balvinder Singh, Member (Technical)

The present appeal has been filed by the appellant under Section 421 of the Companies Act, 2013 for setting aside the impugned order dated 4th September, 2018 passed by the National Company Law Tribunal (hereinafter referred to as the 'Tribunal'), Chennai in TCP No.163/2016 (CP/23/2015) seeking the following reliefs:

- i) That the impugned order dated 4th September, 2018 passed by the Hon'ble NCLT, Single Bench, Chennai in TCP 163/2016 (CP/23/2016).
- ii) Any such other orders as this Hon'ble Tribunal may deem fit in the interest of the facts and circumstances of the present case.

2. The brief facts of the case are that the 1st Respondent company is a closely held family company. The company was incorporated by Mr. M.Ct. Muthiah in 1988 and the shareholding was equally held by the Mr. M. Ct Muthiah and his wife, 2nd Respondent. The authorised capital of the 1st respondent company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each and the paid up share capital of the company is Rs.6,67,130/- divided into 66713 shares of Rs.10/- each. Mr. M. Ct Muthiah died in September, 2006 and his shareholding in 1st Respondent was equally divided into his legal heirs. The details of the shareholding of the appellant, 2nd and 3rd Respondent in 1st Respondent Company, after the death of Mr. M. Ct. Muthiah are asunder:

Appellant	17% -11419 shares
2 nd respondent	66% -43875 shares
3 rd Respondent	17% -11419 shares

3. The appellant (original petitioner) had filed a Company Petition No.23/2015 before the Company Law Board, Chennai against the Respondents under Section 397 and 398 read with Section 402 of the Companies Act 1956/2013 alleging oppression and mismanagement by the Respondents and after establishment of NCLT the petition was transferred to NCLT, Chennai. The original petitioner/appellant had sought the following reliefs:

- i) To declare that the purported board meeting of the Company convened on 06.01.2015 is invalid, non est and illegal and to declare the alleged minutes to be fabricated.
- ii) To declare the appointment of the 4th respondent, Ms Gomathy Subramaniam, as null and void.
- iii) To grant a consequent order of permanent injunction restraining the Company, its agents, servants, employees from giving effect any of the purported resolutions that were purportedly passed at the alleged Board Meeting purported to be held on 06.01.2015.
- iv) Surcharge the 2nd and 3rd Respondents in respect of the amounts of Rs.1,49,1218 and Rs.5,08,782/- paid to Mr. C.T. Malayandi, without

any authority whatsoever, alongwith the interest from the date of such payment.

v) Surcharge the 3rd Respondent for the loss caused to the 1st Respondent company due to the acts of 3rd respondent and direct the 3rd respondent to pay to the 1st respondent company an amount of Rs.15,35,21,000/- being the cost of purchase of property located in Alagappa Road being land and building situated at R.S.No.11/1(Part) admeasuring 6000.024 Sq. ft in the name of the company and an amount of Rs.2.47 crores taken from the company for the purchase of the portion of property in Alagappa Road in her personal name alongwith interest from the date of such withdrawal;

vi) To direct the appointment of an independent valuer for determining the fair value of the shares of the 1st Respondent company and to direct the 2nd and 3rd respondents to either buy the shares held by the Petitioner or sell the shares held by the 2nd and 3rd Respondents in favour of the Petitioners at the fair value to be determined by independent valuer through such process as may be determined by this Hon'ble Bench as fair and reasonable;

vii) To award costs relating to the present proceedings.

4. The original petitioner had also sought the following interim relief from NCLT, Chennai:-

i)To direct the appointment of an independent Chartered Accountant for verifying and auditing the accounts of the 1st Respondent company

and direct the chartered accountant as may be appointed by this Hon'ble Bench to submit a report before this Hon'ble Bench on the financial statements of 1st respondent company for the year ended 31.03.2013 and 31.03.2014, pending disposal of the Company Petition; and

ii) To grant an order of temporary injunction restraining the Respondents from altering the shareholding pattern of the Company and to maintain the shareholding as set out in para 3.7 hereinabove without the leave of this Hon'ble Bench pending disposal of the Company Petition.

iii) To grant an order of temporary injunction restraining not to give effect to the Board Resolution allegedly passed on 06.01.2015 and restraining the 4th Respondent, Ms Gomathy Subramaniam from acting as Director.

iv) To grant an order of temporary injunction from altering the composition of the Board of Directors, being the Petitioner, 2nd Respondent and 3rd Respondent, or induct any other person as director, without the leave of this Hon'ble Bench, pending disposal of the Company Petition;

v) To direct that in respect of a quorum for any meeting of the Board of Directors of the 1st Respondent Company or the meeting of the Shareholders in respect of the 1st Respondent company, shall require the presence of the Petitioner or her nominee, pending disposal of the company petition.

vi) To grant an order of temporary injunction restraining the Respondents from alienating, disposing off or in any manner encumbering the properties of the Company, pending disposal of the company petition.

vii) To issue a direction that the operation of IOB accounts bearing account no.010902000970402, account No.010902000970911 and account no.01090200075561 be frozen pending disposal of the company petition.

viii) To direct the appointment of an independent Observer (at the cost of the 1st respondent company) to conduct the Board meeting and the general meetings of the company in a fair and transparent manner in accordance with law, pending disposal of the company petition.

ix) Pass such further or other order as this Hon'ble Bench may deem fit and proper in the circumstances of the case and thus render justice.

5. The Respondent did not file the reply but only filed reply to the interim prayers sought by the petitioner. The constraint on the part of the Respondents was that the original petitioner is the daughter of the 2nd respondent and sister of 3rd respondent and some of the allegations against the original petitioner were of such nature, if highlighted in the reply, would have embarrassed the family. Respondent averred that petitioner cannot restrain any shareholders in transferring their shares and every shareholder has a right to transfer his shares. Respondent stated that the appointment of 4th respondent as director was properly done at the Board Meeting held on

06.01.2015 and the same is legal and binding. Respondent stated that the original petitioner/appellant is a minority shareholder and the decision of the Board, approved by the majority cannot be questioned by the original petitioner. Respondent stated that they will proceed as per the Companies Act and rules made thereunder to take important decision for the benefit of 1st respondent and the important decisions cannot wait for the presence of the original petitioner when the original petitioner does not attend Board Meetings and the General Meetings. Respondent stated that Act does not provide nominees being appointed for individual directors. Respondent denied that they are disposing the properties of the 1st respondent company and it would be the Board's decision on any purchase or disposal of properties as per the Act. Respondent stated that the accounts of 1st respondent cannot be frozen. Respondent stated that the independent observer cannot be appointed in the Board and the General Meetings. The Respondent prayed for disposal of the petition.

6. The original petitioner filed its rejoinder and reiterated the contents of petition.

7. Respondent filed sur-rejoinder and denied all the allegations levelled in the rejoinder and has specifically stated that there is no intention to oust the original petitioner from the Company.

8. The original petitioner/appellant filed C.A. No.3/2016 seeking the following reliefs:

i)To direct that the bank accounts of the 1st Respondent ought to be jointly operated by the applicant and by either the 2nd or the 3rd respondent.

ii)To direct that an administrator be appointed to take over and oversee the affairs of 1st respondent, pending disposal of the company petitioner

iii)Such further order or orders and/or direction or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

9. After hearing the parties the NCLT Chennai dismissed the petition and passed the following order on 4.9.2018:-

“In the light of the facts and circumstances and the legal position stated above, the petition stands dismissed, and all pending connected Company Applications are also dismissed. The interim orders passed in the Company Applications are vacated including the order of status quo passed on 30.03.2015 which was extended on 22.04.2015. However, there is no order as to costs.”

10.9 Being aggrieved by the impugned order the appellant has filed the present appeal. Counter Reply has been filed Respondent. Rejoinder has been filed by the appellant.

11. We have heard the parties and perused the record.

12. Before we proceed further we observe that sufficient time was granted to the parties to settle the matter by this Appellate Tribunal. The parties were

also directed to file their un-affidavit proposal in sealed cover with the Registrar of this Appellate Tribunal. Later on it was informed to this Appellate Tribunal that 2nd respondent does not want to settle the dispute amicably at Delhi. Thereafter, we heard the appeal on merits.

13. Learned counsel for the appellant argued that it is not disputed that initially 50% shareholding each is held by Mr. M. Ct. Muthiah and 2nd respondent. Learned counsel for the appellant further argued that it is not disputed that after the sad demise of Mr. M. Ct. Muthiah in 2006, 66% shareholding is held by 2nd respondent and 17% shareholding each is held by appellant and 3rd respondent in 1st respondent. Learned counsel for the appellant argued that the appellant discovered at the stage of appeal that 2nd respondent has transferred her shareholding in 2013 to be jointly held by 2nd and 3rd respondent. Learned counsel for the appellant argued that the respondents have suppressed this crucial fact and the impugned order is passed.

14. Learned counsel for the Respondents argued that the appellant cannot restrain any shareholders in transferring their shares. Learned counsel for the Respondents further argued that every shareholder has a right to transfer its shares and the respondents cannot be restrained from dealing its shares. Learned counsel for the Respondents further argued that the appellant has no right to restrain or refrain the respondents from dealing with shares.

15. We have heard the parties and perused the record. Every shareholder have a right to transfer his right after completing all the formalities, if otherwise the same are in order. We have gone through the document at Page

No.117 of IA No.686 of 2019 and noted that the shares are now jointly held by 2nd and 3rd Respondent and the transfer of registration of shares was done on 28.6.2013. We further note that the shares have been registered on 28.6.2013 much before filing of Company Petition by the appellant before CLB/NCLT in 2015. We have also noted that the shares relating to the appellant are untouched and she continues to be 17% shareholder of 1st respondent. Learned counsel for the appellant has not informed the Tribunal what harm has been caused to her if the shares are now jointly held. Further the shares have not been transferred to an outsider. Learned counsel for the appellant has also not shown if there is any illegality. Therefore, we find no force in his arguments, therefore, it is rejected.

16. Learned counsel for the appellant argued that equitable distribution was agreed and manner of distribution was being discussed for both the parties to have as equal division of wealth as possible. Learned counsel for the appellant argued that a demerger scheme was also prepared for trifurcation of 1st respondent but the dispute started when 3rd respondent derailing the settlement talks on one pretext or the other.

17. We have noted his argument and perused the record. On this issue we have already observed in para 12 above that sufficient time was granted to the parties to settle the matter. The parties were also directed to file their un-affidavit proposal in sealed cover with the Registrar of this Appellate Tribunal. Later on it was informed to this Appellate Tribunal that 2nd respondent does not want to settle the dispute amicably at Delhi. Thereafter,

this Appellate Tribunal intended to hear the appeal on merits. It is now too late for the appellant to raise this issue now.

18. Learned counsel for the appellant argued that the appointment of 4th Respondent as independent director or non-family member is illegal. No agenda for appointment was in the notice or email. No such Meeting was held as the appellant was present till 10.20 AM on 6.1.2015. Learned counsel for the appellant further argued that the Minutes of Meeting shows that the Meeting was held at 2 PM on 6.1.2015 whereas the extract states that the Meeting was held at 10.30AM.

19. Learned counsel for the Respondent argued that there is no bar for the appointment of additional director of any closely held company and the appointment has been made after making the necessary compliances and approved by the majority of the directors. Learned counsel for the Respondent further argued that the appellant never came for any board meeting even on 6.1.2015. Learned counsel for the Respondent further argued that if she had attended the Meeting she would have written on same date to inform that she had come but meeting was conducted. Respondent argued that appellant first brought the issue on 13.2.2015 via email as a clear afterthought and taking advantage of typographical error in minutes of time of meeting.

20. We have heard the parties and perused the record. We note that the Meeting was held on 6.1.2015 and the appellant was well aware that the Meeting will be held, therefore, the appellant herself stated that she went at the venue and was present till 10.20.AM. We observe that the intention of the appellant was not to attend the Meeting otherwise she would have waited

there at least some time after 10.30 AM and would have written that no meeting was held. Further even if the appellant would have attended the meeting the resolution would have been passed with majority of the directors. As regards the appointment of 4th Respondent as independent director is concerned, we find no illegality in appointment.

21. Learned counsel for the appellant argued that Alagappa Property was purchased in company's name. There is no authorisation and No commercial value. Architect has confirmed this fact (Page No.379 of Appeal Paper Book). Learned counsel for the appellant argued that the only purpose to purchase this property to get access/passage to 3rd Respondent's residential house. Learned counsel for the appellant further argued that the property was purchased in 3rd Respondent's name with unauthorised loan of Rs.2.47 crores from the Company and allegedly repaid to the subsidiary of the Company by 2nd Respondent.

22. Learned counsel for the Respondent argued that 1st Respondent passed a Board Resolution dated 1.2.2013 (Annexure 3/Page150-151 of Counter Affidavit) wherein the Board of Directors, including the appellant, authorised 2nd respondent to invest surplus funds of 1st respondent. Learned counsel further argued that 2nd respondent invested the said surplus fund towards purchase of property situated at Alagappa Road in the name of 1st Respondent vide sale Deed dated 15.4.2013. Learned counsel for the Respondent refuted the allegation that it was purchased for access to a property is false. Learned counsel further argued that no company will purchase an access way which is valued three times more than the property to which it is to provide access

itself. Learned counsel for the Respondent further argued that 3rd respondent also purchased another strip of land adjacent to land of 1st respondent on same date vide another sale deed for total consideration of Rs.15.25 crores out of which 1st respondent advanced a sum of Rs.2.47 crores to 3rd respondent for stamp duty towards the property purchased. Learned counsel for the Respondent further argued that the said advance was duly repaid and settled in less than a month. Learned counsel for the Respondent argued that 2nd respondent from liquidating some of her personal investments (redemption of mutual funds and sale of shares) and raised a sum of Rs.2.30 crores which she paid to the company and settled the loan. Learned counsel for the Respondent further argued that 3rd Respondent vide email dated 15.4.2013 had intimated the appellant about the purchase of property and the amount paid by 1st Respondent (Page 266 of Appeal). Learned counsel for the Respondent further argued that no objection was raised by appellant about the purchase of properties but after over 19 months, the appellant got an architect and sent email raising certain frivolous objection, without any consultation with Respondent. Learned counsel for the Respondent argued that the only purpose to raise objection was to file company petition before the NCLT. Learned counsel for the Respondent argued that to purchase the property was a commercial decision for the benefit of 1st respondent.

23. We have heard the parties and perused the record. It is not disputed that vide Board Resolution dated 1.2.2013, 2nd respondent was authorised to invest surplus fund of 1st respondent. Accordingly, 2nd respondent invested the amount in property. It is also not disputed that 3rd respondent also

purchased another property on the same date for which an advance of Rs.2.47 was given to 3rd respondent by 1st respondent. We note that the said advance has been repaid by 2nd respondent by liquidating her personal investments. Learned counsel for the appellant not disputed the same. We are convinced that purchase of the property is a commercial decision which cannot be questioned as the same may either result in profit or loss and the commercial decision does not require any judicial interference. Further raising objections after 19 months with support of architect is an afterthought to build a case for filing before the NCLT.

24. Learned counsel for the appellant argued that the appellant had established a Trust-“*Learning Curve Foundation*” to establish a residential school and the same was done with full support and knowledge of 2nd respondent. Learned counsel for the appellant argued that Rs.25 crores was earmarked to the same and 2nd respondent gave a donation of Rs.1 crores. Learned counsel for appellant argued that account was created in Indian Overseas Bank and amount was transferred to it and the appellant was authorised signatory. Appellant entered into multiple agreements with consultants, architects. Learned counsel for the appellant argued that 3rd respondent resigned from LCF Trust on 22.1.2014. Learned counsel for the appellant argued that the appellant apprehended that funds allocated to her would be blocked, therefore, the appellant took 3 pay orders for a total of Rs.22 crores in Company’s name to safeguard any amounts from being siphoned for other purposes and the same amount was deposited in the Company’s account in HDFC Bank. Learned counsel for the appellant argued

that 2nd respondent had given false affidavit to take out the money stating DD was taken by Respondents and they had lost the same and tried to cancel the DD. Appellant mailed the Bank for freezing account so it is not wrongly removed. Learned counsel for appellant argued that now there is an attempt by the Respondents to dissociate the Company from the Project.

25. Learned counsel for the Respondent argued that on the request of appellant, 2nd respondent provided financial assistance to appellant for constructing the school at gifted a sum of Rs.6 crores to appellant (Page 29, para 7(j) of the appeal paper book). Learned counsel for the Respondent argued that it later came to the knowledge of Respondent that the sole purpose of the appellant and her husband was to grab monies and exclude any involvement of the 2nd Respondent, which fact was further substantiated by inducting the parents of Mr. Tarun Ghai (husband of appellant) as Trustees. Learned counsel for the Respondent argued that appellant and her husband repeatedly sought donations from 2nd respondent under the guise of LCF Trust and later even "*other trusts*", however, admittedly the expenses sought for were for the personal expenses of the appellant and her husband (Pages 300, 358 and 359 of appeal paper book). Learned counsel for the Respondent argued that no Board Resolution was passed for the said expenses (Page 472 of appeal paper book). Learned counsel for the Respondent argued that 1st Respondent never agreed to fund any school project of LCF Trust (Para 15, Page 17 and 18 of counter affidavit). Learned counsel for the Respondent argued that the 2nd respondent resigned from the Trust. Learned counsel for the Respondent further argued that it is true that

in terms of Board Resolution an amount of Rs.25 crores was deposited in the said account of IOB on 10.1.2014. Learned counsel for the Respondent argued that shockingly appellant and her husband started to transfer and siphon off monies and drew DDs of Rs.22 crores in favour of 1st Respondent and deposited the DD in another HDFC Bank account of 1st respondent and got another demand draft made in name of 1st respondent. 2nd respondent immediately issued letter to Bank (Page 345 of appeal) to cancel the earlier mandate. Learned counsel for the Respondent argued that merely adding an additional signatory to a bank account cannot be claimed to be an act of oppression. Learned counsel for the Respondent argued that the money in IOB of 1st respondent was only for 1st respondent use and no authorisation and/or approval was given to allow appellant to use money for any other purposes. Learned counsel for the Respondent argued that LCF Trust has no connection with 1st respondent and this cannot be claimed to be an act of oppression and mismanagement.

26. We have heard the parties and perused the record. We note that the Trust has no connection with 1st respondent. It is true that the 2nd Respondent has gifted the amount to appellant. From the statement we find that the appellant has utilised the amount for their personal expenses. We fail to understand when the account was opened with Indian Overseas Bank then why it was shifted to HDFC Bank and huge amounts withdraw. We find no illegality in freezing the account by 2nd respondent. It is true that merely adding an additional signatory to a bank account cannot be claimed to be an act of oppression especially when she continues to be one of the signatories.

27. After we reserved the judgement, learned counsel for the appellant filed an IA No.605/2020 praying for an order of interim injunction restraining the Respondents from conducting the Board Meeting on 10.2.2020 and passing any resolution on the business mentioned in the notice dated 27.1.2020 pending disposal of the appeal. After hearing the parties, this Appellant Tribunal on 6.02.2020 ordered that the Meeting may not be convened till further orders.

28. To conclude the issues raised in the appeal is re-agitation of all the points which were raised before NCLT. NCLT also discussed all the issues and disallowed the petition. In view of the discussions above, we have also reached a conclusion that no prima facie case is made out to interfere in the impugned order

29. In view of the foregoing discussions and observations we find no merit in the appeal. The appeal is dismissed. No order as to cost. Interim order passed on 6.2.2020 is hereby vacated.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member Technical

New Delhi

Bm