

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 302 of 2017

IN THE MATTER OF:

**1. K. Sivaprakasam,
22, L. G. N. Road, Mount Road,
Anna Salai, Chennai – 600 002.**

...Appellants

**2. Kannagi,
22, L. G. N. Road, Mount Road,
Anna Salai, Chennai – 600 002.**

**3. S. Bhagiyalakshmi (alias) Ramya,
22, L. G. N. Road, Mount Road,
Anna Salai, Chennai – 600 002.**

**4. S. Suganya,
22, L. G. N. Road, Mount Road,
Anna Salai, Chennai – 600 002.**

**5. S. Shanthi,
22, L. G. N. Road, Mount Road,
Anna Salai, Chennai – 600 002.**

**6. S. Kethara Gowri (alias) Brindha,
22, L. G. N. Road, Mount Road,
Anna Salai, Chennai – 600 002.**

**7. Sindhu
22, L. G. N. Road, Mount Road,
Anna Salai, Chennai – 600 002.**

**8. K. Renuka Devi,
22, L. G. N. Road, Mount Road,
Anna Salai, Chennai – 600 002.**

Vs

**1. SKN Boarding & Lodging Private Limited,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

....Respondents

**2. N. Selvaraj,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**3. N. Ramesh,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**4. S. Kasturi,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**5. N. Manikandan,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**6. N. Dhanalakshmi,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**7. S. P. Ramalingam,
C/o SKN Boarding & Lodging Private Limited,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**8. R. Raja Kumari,
C/o SKN Boarding & Lodging Private Limited,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**9. R. Manikandan,
C/o SKN Boarding & Lodging Private Limited,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**10. K. Sivaraman,
C/o SKN Boarding & Lodging Private Limited,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**11. K. Thirupati,
C/o SKN Boarding & Lodging Private Limited,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**12. N. Srinivasan,
C/o SKN Boarding & Lodging Private Limited,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

**13. Jayalakshmi,
C/o SKN Boarding & Lodging Private Limited,
24, Begum Sahib Street, 3rd Lane,
Anna Salai, Chennai – 600 002.**

Present:

**For Appellant: Shri S. Guru Krishna Kumar, Senior Advocate
with Shri Aditya Verma and Shri Pranay Jain,
Advocates.**

For Respondents: None.

ORDER

(2.11.2017)

1. Heard learned counsel for the appellants. The respondents, in spite of notice are not present. This appeal was admitted on 4th October, 2017. At that time Impugned Order so far as appointment of Chartered Accountant as Valuer and other interim directions were stayed. Respondents were directed not to alienate any of the movable or immovable property nor change the shareholding pattern without prior permission of this Tribunal. The learned counsel submits that these order were served to the respondents but they have declined to receive.
2. Coming to the merits of this appeal the appellants have filed the present appeal under section 421 of Companies Act, 2013 against the impugned order dated 6th July, 2017 passed by the Hon'ble National Company Law Tribunal, Chennai Bench ("NCLT") in TCP No.126 of 2016 (old C.P. No. 71 of 2013). The petition was filed under Section 397 and 398 of Companies Act 1956 (Old act).

3. It is the grievance of the learned counsel for the appellant that the company petition was filed by the appellants raising grievances of oppression and mismanagement. It has been disposed off by the learned Tribunal holding that the appellants have not been able to prove oppression and mismanagement. The Tribunal still directed that it was impossible for both groups to be there in the company and that there should be exit process and so an independent Chartered Accountant as valuer needs to be appointed for which the learned NCLT directed both parties to suggest names.
4. Learned NCLT called upon the respondents to suggest names. Learned counsel submits that although the respondents have been marked ex-parte the NCLT went through the counter which had been filed by the respondents but what the NCLT did was only to pick up parts from the counter and ignoring the rejoinder which the appellants had filed fell in grave error and misguided itself to find that the appellants did not make out a case of oppression and mismanagement.
5. The learned counsel for the appellants submitted that the NCLT ignored the case of the appellants of transfer of shares in 1995 on the basis that between 1997 to 2000 the Appellant no.1 was the Managing Director and he had not done anything about it. The learned counsel pointed out that the respondents themselves had in their counter (Annexure A-35) in Para 47 as well as Para 48 mentioned with regard to the transfer of shares that the transfer was legal and although the transfer was shown in 1995, the transfer was informed in the returns filed only in 2001. The respondents mentioned in Para 48 as under:

“48. The respondent submits that the averments contained in para 6.11 of the petition are patently false and untenable. The respondents submit that shares were transferred from various individuals and Late Mr. S. Narayanaswamy’s family to the respondents No.2,3,5,6,7,8,9,10,11,12,13 and late Mr. S. Natarajan during the year 1995. It is significant that transfer in favour of the afore mentioned transferees have taken place on 7/5/1995 and 13/9/1995 and the same was made known in the public domain from 2001 onwards. Petitioners with a malafide intention are now challenging the said transfer of shares in the legal proceedings in the year 2013.”

6. According to the learned counsel before 28th April 1997 (the date the Appellant no.1 became Managing Director), Mr. Natrajan, father of Respondents no. 2 and 3 was the Managing Director. Still if the shares had been transferred in 1995, the same were not shown in the concerned returns filed soon thereafter. The same was shown in returns only in 2001 and thus the learned NCLT blaming the appellants either for delay or laches or that he did not act when the Appellant No. 1 had been Managing Director, is improper.
7. The learned counsel submitted that regarding finding relating to transfer of land of company and holding the appellant guilty for diverting the proceedings to his accounts and not satisfying TIIC, the learned NCLT did not consider the relevant portions either from the counter that respondents filed or the rejoinder which the appellants had filed. The learned counsel referred to the pleadings in this regard of the respondents in Para 49 of their counter and the pleadings of the appellants in rejoinder, a copy of which is filed as Annexure A-38 in this petition and reference was made to Para 33. The learned counsel submitted that in the Original Company Petition in

Para 6.7 there are pleadings of the appellants with regard to this transfer of property but all these aspects are not considered. The learned NCLT has rejected the claim of the appellants regarding oppression and mismanagement improperly according to the Counsel for the Appellant.

8. Going through the material available in this matter and considering the submissions of the learned counsel for the appellants and the matter, it does appear that the learned NCLT had erred in not considering the whole material available. It appears that the learned NCLT was conscious of the submissions that the respondent Company was in a dormant state. It is the submission of the learned counsel that the respondents are keeping back information from the Appellants and what they are doing with the properties of the company is being held back from the knowledge of appellants. He states that because of the dormant condition the information from Registrar of Companies has also become difficult to get and it would be necessary to get the information and consider documents regarding state of affairs of the company. The learned counsel for the appellant wanted to file an I.A. regarding the state of affairs. Learned counsel for the appellants has submitted that the functioning of the company was such that receiver needs to be appointed. We however find that it would be appropriate that the matters are first adjudicated before the learned NCLT and decision is taken. It would be for the NCLT to consider the state of affairs and the questions regarding winding up, if necessary, under Section 241 and 242 of The Companies Act 2013.
9. (A) For the above reasons, we find that the impugned order cannot be sustained and deserves to be set aside. We set aside the impugned order and remit the matter back to the Learned NCLT. The Learned NCLT shall

reconsider the disputes raised by the appellants keeping in view whole material as available in the records. The appellants would be at liberty to request the learned NCLT to consider calling information from Registrar of Companies.

(B) On the lines of the earlier Order of this Appellate Tribunal dated 4th October, 2017, it is directed that the respondents will not alienate the movable or immovable properties of the company, nor change the shareholding pattern, till disposal of the matter before National Company Law Tribunal, except with prior permission of the Learned NCLT.

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

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