

(2024) 04 NCLT CK 0025
In the National Company Law Tribunal
Case No : CP. 44 Of 2023

Milind Patil

APPELLANT

Vs

Sanjay Founders Private Limited

RESPONDENT

Date of Decision : 12-04-2024

Acts Referred:

Companies Act, 2013 — Section 58, 59, 241, 242, 244
Companies Act, 1956 — Section 397, 398, 402

Citation : (2024) 04 NCLT CK 0025

Hon'ble Judges : V.G. Bisht, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Amir Arsiwala, Kunal Kanungo, Avinash R. Khanolkar

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. This Company Petition CP 44/2023 is filed on 25.1.2023 under Section 241-242 r/w Section 244 of the Companies Act, 2013 ("Act") by Mr. Milind Patil, ("Petitioner") against Sanjay Founders Private Limited & Others seeking following reliefs:

a. an order under section 241, 242 of Companies Act, 2013 to bring an end to the acts of oppression and mismanagement perpetrated by Respondents;

b. an order directing the Respondents to transfer and/or transmit the shares belonging to the Deceased Mr. Bharamgonda Patil in favour of the Petitioner herein;

c. an order directing rectification of the register of members of Respondent No. 1 to remove the name of Mr. Bharamgonda Patil in respect of share certificate bearing folio No. 6 as shareholder of Respondent No. 1 and to enter the name of Petitioner in place of Mr. Bharamgonda Patil as the holders of equity shares under share certificate bearing folio No. 6;

d. an order directing the Respondents to render true and faithful accounts of all transactions entered into by Respondent No. 1 from the Financial Year 2008-2009 to the filing of the present petition and this Hon'ble Tribunal may give directions with regard thereto as it may deem fit and proper;

e. an order framing a scheme for the proper management and administration of the Respondent No. 1 on such terms and conditions as this Tribunal deems fit and proper;

f. an order appointing an Administrator or Independent Committee for management of the Respondent No. 1;

g. an order appointing an independent auditor to make an investigation in respect of the dealings and transactions of the Respondent No. 2 to 4 acting by themselves or by their servants or agents or assigns, in connection with the management and affairs of the Respondent No. 1;

h. an order appointing an independent auditor of Respondent No. 1;

2. One M/s. Sanjay Founders ("Firm") was a registered partnership firm which was formed on or about 23rd April 1969. At that time, the Firm had 3 partners. The Respondent No. 1 was incorporated on 26th February 1975 and as such the business of the Firm, including all its assets were taken over by Respondent No. 1.

2.1. The financial position of the Respondent No. 1 for the past three years for the respective financial years is as under:

Particulars

2020

2021

2022

Share

Capital

Rs. 2,81,100

Rs. 2,81,100

Rs. 2,81,100

Reserves

Rs.

21,23,228.52

Rs.

21,23,228.52

Rs.

21,23,228.52

Loans

0

0

0

Turnover

0

0

0

Accumulated

Profits/(loss)

(2,91,68,229.6

8)

(2,91,84,829.6

8)

(2,92,39,329.6

8)

2.2. At the relevant time, in view of there being disputes and differences between two groups of shareholders of Respondent No. 1, a petition under section 397-398 of Companies Act, 1956 being CLB Company Petition No. 17 of 2007 ("1st Petition") was filed by Bharamgouda Adgouda Patil and Ors. (including Petitioner herein) against Respondent No. 1 and Ors. seeking reliefs as more particularly prayed therein before the Company Law Board ("CLB"). The Petition was disposed of by the CLB vide its order dated 2nd December 2008 directing the Respondent No. 1 to give adequate representation to the Petitioners therein in the management of business of Respondent No. 1. However, this Order dated 2nd December, 2008 was challenged by the Petitioner for not granting other reliefs and by the Respondent in cross objection for holding the Respondent Company to be quasi partnership in nature. The Hon'ble Bombay High Court vide its order dated 27th/ 28th July 2015 in Company Appeal No. 10 of 2009, dismissed the appeal of the Petitioners therein and allowed the cross-objections of the respondents therein by setting aside the finding of CLB about the quasi-partnership nature of Respondent No. 1 and the directions to the Respondent No.

1 to give adequate representation to the petitioners therein in management of Respondent No. 1's business.

2.3. The Petitioners has submitted that the cause of action for filing the present petition and the reliefs claimed herein are in no manner whatsoever connected with the aforesaid proceedings filed before the CLB and the Hon'ble Bombay High Court, and no relief as claimed in the present petition formed the subject matter of the aforesaid proceedings and as such, the present petition is a completely independent proceeding based on a fresh cause of action accruing in favour of the Petitioner.

2.4. On or about 4th February 2009, Mr. Bharamgonda Patil ("Deceased"), father of the Petitioner died. It is pertinent to note that prior to his death, the Deceased had addressed a letter dated 21st July 2008 to Respondent No. 1, inter alia calling upon Respondent No. 1 to add the name of the Petitioner as a joint holder in respect of the Deceased's shareholding in Respondent No. 1.

2.5. Consequently, the Petitioner has also approached Respondent No. 1 from time to time, inter alia requesting Respondent No. 1 to transfer and/or transmit shareholding of the Deceased in favor of the Petitioner. In that regard, the Petitioner has addressed communications dated 23rd February 2009, 2nd May 2009, 31st August 2010 and 14th September 2010 to the Respondent Nos. 1 and 2 as also has verbally communicated the same to Respondents.

2.6. By a letter dated 8th October 2010, Respondent No. 1, whilst referring to the Petitioner's letter dated 14th September 2010 calling upon Respondent No. 1 to effect the transmission of shares of the Deceased in the name of the Petitioner, informed the Petitioner that in Respondent No. 1's board meeting held on 4th September 2010. The board of directors of Respondent No. 1 held on 26th March, 2011 had considered the issue of transmission of shares of the Deceased in favour of the Petitioner and come to a conclusion that the Petitioner would have to obtain a succession certificate and till such time, the board of directors of Respondent No. 1 will not be in a position to act on the application for transmission of shares. It was also orally informed to the Petitioner to obtain a succession certificate for the purposes of transfer/ transmission of shares of the said Deceased in favor of the Petitioner.

2.7. Accordingly, the Petitioner filed necessary proceedings before the Hon'ble Civil Judge, Junior Division, Ichalkaranji for obtaining succession certificate, which was obtained by the Petitioner on or about 16th June 2022.

2.8. After obtaining the succession certificate, the Petitioner addressed a letter dated 16th December 2022 to Respondent No. 1, pointing out the aforesaid and providing Respondent No. 1 with a copy of the succession certificate dated 16th June 2022 and accordingly, calling upon the Petitioner to transfer and/or transmit the shares of the Deceased in favour of the Petitioner.

2.9. However, till date, Respondent No. 1 has not responded to the aforesaid

letter dated 16th December 2022 addressed by the Petitioner and as such, the Respondents have refused to transfer and/or transmit the shareholding of the Deceased in favour of the Petitioner. It has now come to the knowledge of the Petitioner that the Respondents, with a view to erode the value of Respondent No. 1 and consequently, the value of Petitioner's shareholding are in the process of transferring and/or alienating the Property, not only to the detriment of the Petitioner, but also other shareholders of Respondent No.1. Recently, from the Petitioner's acquaintances in the area where the Property is situated, it has come to the knowledge of the Petitioner that several prospective buyers have expressed their interest in purchasing the Property and as such, Respondent Nos. 2 to 4 are at an advanced stage of eroding the substratum of Respondent No. 1 company. Such attempt at the instance of the Respondents, more so at a time when the Petitioner, at the request of the Respondents has provided the Respondents with a succession certificate for transfer and/or transmission of shares of the Deceased in Respondent No. 1 in favour of the Petitioner raises further suspicion on the Respondents' intention to erode the substratum of the Respondent No. 1.

2.10. The Respondent No. 1 neither added the Petitioner as joint holder to the shares of Petitioner's father late Mr. Bharamgonda Patil holding 601 shares of the Respondent No.1 Compay during life time, nor has transmitted the shares in the name of legal heirs of his deceased father despite submission of succession certificate vide letter dated 16th December, 2022. Pertinently, even today the original Share Transfer Form and original Share Certificate are with the Respondents.

2.11. During the pendency of the present Petition, Respondents replied vide their letter dated 25th January 2023 to Petitioner's letter dated 16th December 2022 thereby asking the Petitioner to furnish certain details as to the communication address and Aadhar Card. It is submitted that by said letter dated 25th January 2023 the Respondents have deliberately with malafide intention to harass the Petitioner and delay the simple transmission of shares, asked for the details of the address of the Petitioner by giving flimsy reasons. As admitted by the Respondents in paragraph A(4) of their Reply dated 19th December 2023 that Petitioner and his family resides at C.S. No. 22734, 22/38, Station Road, Ichalkaranji, Kolhapur, which premises were built for the residence of the Directors and Shareholders of the Company. Therefore, it clearly shows that the Respondents have been very well aware about the address of the Petitioner where Petitioner's father along with his family have been over residing since the time they were built and it is an admitted fact that the Petitioner's father was one of the founding partners of the Sanjay Founders Pvt. Ltd.

3. The Respondent M/s Sanjay Founders Private Limited filed an application seeking recall of the order dt. 26.09.2023 whereby this matter was reserved for orders after Respondents have failed to file reply by the appointed date i.e. 26.09.2023 and this application seeking recall was dismissed. However, in the

interest of justice, liberty was granted in favour of the Respondent to file and place on record brief synopsis within a week along with the supporting documents and the same be served to the other side. The Respondents have instead filed the reply on 21.12.2023. The said reply is taken into consideration as written submission of the Respondent.

3.1. The Respondent has submitted that Petitioner himself holds 1.46% shares of the company and also claiming 21.38% shares of the deceased as legal heir which are not yet recorded in his name. Respondent further humbly submits that consideration of Share Transmission Application of the legal heir of the deceased i.e. the Petitioner is in process and is pending in consideration by the Board of the Company as on the date of submission of the petition. The present petition is not legally tenable in the eyes of law and hence it shall not be maintainable and be dismissed.

3.2. The petitioner is fully and completely aware and known about the financial position of the company as during his directorship tenure only company has stopped its manufacturing activity since October 2013.

3.3. Petitioner is illegally and irregularly residing at the owned premises of the Respondent No. 1 Company located at the CS 22734, 22/38, Station Road, Ichalkaranji, Kolhapur. Petitioner is himself is enjoying properties of the Respondent No. 1 the Company and not adhering the duties and responsibilities of the Director and shareholder and gaining personal gains due to undue influence.

3.4. The petitioner alongwith the applicants to the Succession Certificate who claims to be the legal heirs of deceased Shri. Bharamgonda A. Patil, are the founders, promoters and directors of the Pragati Founders Private Limited, which owes to the Respondent No. 1 of Rs. 52,60,802/- which has been brought forwarded in the note no. J the Audited Financial Statements of the FY2022-2023 of the Respondent No. 1 in this Affidavit in Reply. This could be ascertained from the Audited financial statements of the Pragati Founders Private Limited for the Financial year 2009-10 depicting Rs. 51,36,330.24 payable to the Respondent No. 1 in the Schedule No. 4 of Balance Sheet of 2009-10 of the Company of the Petitioner. Further to submit that it is found that in the financial year 2010-11, the said amount of Rs. 51,36,330.24 has been written off from the books of accounts of the Pragati Founders Private Limited without intimating to the Respondent No. 1 and it shows the clear intent of the petitioner and their family who claims to be the legal heirs of the deceased shareholder late Mr. Bharamgonda Patil of duping the Respondent No. 1. However it is being carried on in the books of accounts of the Respondent no. 1 of which the petitioner was a director during the same period and also the director of the Pragati Founders Private Limited. This clearly shows the malafide intentions and acts of the petitioners which has been detrimental to the interest of the Respondent No. 1 and also detrimental to the public interest, as the petitioner was fully knowing of the facts that the Respondent No. 1 having huge liabilities towards taxes and

labour payments. This is clearly evident of the frequent mischievous action of the petitioners towards the Respondent No. 1.

3.5. Petitioner has merely created nuisance to the fair management of the Respondent No. 1 and acted against the interest of the affairs of respondent No. 1. In the meantime, after his removal from the directorship of the company vide order no. 27 dated 28th July 2015 of the Hon'ble High Court of Bombay and having fully aware about the intention of the company and its directors to sell properties of Respondent No. 1 to clear the statutory and other dues, on several occasions the petitioner has published mischievous public notices in local newspapers pretending to be the director of the company, spreading rumours about their designation in the company along with false statements that the ownership of the company's properties are in dispute.

4. Heard Learned Counsel and perused the material on record.

4.1. We note that the Petitioner's main grievance is in relation to non-transmission or non-transfer of shares in his name after demise of his father, who was a shareholder of the Respondent No. 1 company. The Petitioner has submitted the succession

certificate vide letter dated 16.12.2022 obtained from the court of competent jurisdiction. However, on perusal of certificate dated 16.06.2022, we find that the said succession certificate declares the following persons as legal heirs entitled to the property, including the shares, of the deceased.

1. Smt. Pragati Bharamgouda Patil
2. Shri. Milind Bharamgouda Patil
3. Shri. Manoj Bharamgouda Patil
4. Smt. Manasi Padmakar Hukeri

4.2. The shares are still stated to not have been transmitted by the Respondent No. 1 company. Apart from this, the Petitioner has alleged that the Respondents, with a view to erode the value of Respondent No. 1 and consequently, the value of Petitioner's shareholding are in the process of transferring and/or alienating the Property, not only to the detriment of the Petitioner, but also other shareholders of Respondent No. 1.

4.3. The Hon'ble Supreme Court in the case of Ram Parshotam Mittal Vs. Hotel Queen Road Pvt. Ltd. (2019) 20 SCC 326 held that oppression would be made out –

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-a-vis the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact."

4.4. In the present case, we note that the Petitioner had submitted the succession certificate, required by the Respondent No. 1 company for transmission of shares in his name, on 16.12.2022. However, the succession certificate declares 4 persons as entitled to shares of the deceased. On perusal of the letter dated 16.12.2022 sent by the Petitioner to Respondent No. 1, we note that the petitioner has requested for transmission of shares in his own name, despite the succession certificate declaring other three persons also equally entitled to the shares of the deceased. Accordingly, we can not hold that the acts of the Respondents were harsh or burdensome so as to constitute the same as oppression.

4.5. On careful consideration of the averments in the petition and written submissions placed before us, we find that this petition having been filed u/s 241-242 of the Companies Act, 2013 basically seeks transmission of shares in the name of the petitioners, though allegation of alienation of property has also been made but the same are merely in nature of apprehension that such alienation of property may cause dilution to value of their shareholding. It is pertinent to note that Section 58 & 59 of the Companies Act, 2013 provides specific remedy for non-transmission of shares in the name of legal heir on death of the shareholders, while section 241-242's relief are broad in nature and may entail relief in terms of section 58-59 of Companies, Act, 2013. It is trite law that general laws do not prevail over special laws.

4.6. Per contra, the Respondent no. 1 has stated in the written submission that it had total outstanding of statutory dues amounting to Rs. 7,26,01,718/- out of which a sum of Rs. 2,95,04,543/- was paid out of proceeds of sale of some properties thus still leaving unpaid statutory dues of Rs. 4,30,97,175. We also take note of submission of the Respondent that one of Petitioner company owes money to the Respondent No. 1 company and the Petitioner's are enjoying the property of Respondent No. 1 as their own Residence without authorisation by Respondent No. 1 company. It is trite law that Section 241-242 vests equitable

jurisdiction in this Tribunal, which can not be invoked in favour of person who themselves are on wrong side. Accordingly, we do not find any merit in the present petition and the same deserves to be dismissed.

4.7. Nonetheless, the transmission of shares held by a deceased in favor of his legal heir takes place by operation of law, subject to fulfilment of necessary procedural formalities. We find that the petitioners have completed these formalities substantially. Accordingly, in the interest of justice, we consider it appropriate to direct the Respondent No. 1 to complete the transmission in favor of the Petitioner within 60 days from the date of this Order after obtaining remaining information at one go.

4.8. Needless to say, the Respondent No. 1 company shall make available annual accounts of the company as is available to the members of a company regularly without fail and delay.

5. In view of the foregoing, CP 44/2023 is partly allowed and disposed of accordingly.