

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 182 of 2019

[Arising Out of Impugned Order Dated 26th June, 2019 passed by the National Company Law Tribunal, Single Bench Chennai, In TCP/159/2016 in CP/15/2015]

IN THE MATTER OF:

- 1. Thangam Metal Cans Private Limited
Represented by its Director
L.Balaji
17&26, Thiruvottiyur High Road
New Washermenpet,
Chennai – 600 081 ...Appellant No.1**

- 2. L.Balaji
S/o Mr. R.Lenin
T-11, 304, Esplanade
Tondiarpet
Chennai – 600 081 ...Appellant No.2**

Versus

- 1. R.Srinivasan
S/o Mr. Rathnasamy Nadar
12/4/8 N.N.Road
Virudhunagar – 626001 ... Respondent No.1**

- 2. S.Krishna Kumar
S/o. Mr.R.Srinivasan
12/4/8 N.N.Road
Virudhunagar – 626001 ... Respondent No.2**

- 3. R.Kanagavel
S/o. Rathnaswamy Nadar
71 Muthusamy Street,
Virudhunagar – 616001 ...Respondent No.3**

- 4. R.Mahesh Kumar**
S/o. Rathnaswamy Nadar
71 Muthusamy Street,
Virudhunagar – 616001 ...Respondent No.4
- 5. L.Saravanan**
S/o. R.Lenin
A 30 Grahalaksmi Apartments, T.H
Road, New Washermanpet
Chennai – 600081 ...Respondent No.5
- 6. M.Venkatesh Kumar**
S/o. R.Mahesh Kumar
71 Muthusamy Street,
Virudhunagar – 616001 ...Respondent No.6
- 7. R.Lenin**
S/o Mr. Rathnaswamy Nadar
No.8, Patel Road,
Virudhunagar – 626 001 ...Respondent No.7
- 8. L.Desigamani**
W/o Mr. R.Lenin
No.8, Patel Road,
Virudhunagar – 626 001 ...Respondent No.8
- 9. Athitya Kumar**
S/o Mr. R.Balaji
T-11, 304, Esplanade,
75, New Vaidyanathan Street,
Tondiarpet
Chennai – 600 081 ...Respondent No.9
- 10. B.Ramkumar**
S/o Mr. R.Balaji
T-11, 304, Esplanade,

**75, New Vaidyanathan Street,
Tondiarpet
Chennai – 600 081 ...Respondent No.10**

**11. Balaji Inimai
W/o Mr. R.Balaji
T-11, 304, Esplanade,
75, New Vaidyanathan Street,
Tondiarpet
Chennai – 600 081 ...Respondent No.11**

**12. M.Rajesh Kumar
S/o.R.Mahesh Kumar
No.40, Muthusamy Street,
Virudhunagar – 626 001 ...Respondent No.12**

For Appellants: Mr. Rana Mukherjee, Sr. Advocate alongwith Mr. Shantanu Singh & Mr. L. Muralikrishnan.

For Respondents: Mr. Nikhil Nayyar, Sr. Advocate alongwith Mr. Ravi Raghunath & Mr. Ramesh Kumar, for R-1 & 2.

With

Company Appeal (AT) No. 220 of 2019

IN THE MATTER OF:

**1. Balaji Inimai
W/o Mr. R.Balaji
T-11, 304, Esplanade
75, New Vaidyanathan Street
Tondiarpet Chennai – 600 081 ...Appellant**

Versus

**1. R.Srinivasan
S/o Mr. Rathnasamy Nadar**

- 12/4/8 N.N.Road
Virudhunagar – 626001 ... Respondent No.1**
- 2. S.Krishna Kumar
S/o. Mr.R.Srinivasan
12/4/8 N.N.Road
Virudhunagar – 626001 ... Respondent No.2**
- 3. R.Kanagavel
S/o. Rathnaswamy Nadar
71 Muthusamy Street,
Virudhunagar – 616001 ...Respondent No.3**
- 4. R.Mahesh Kumar
S/o. Rathnaswamy Nadar
71 Muthusamy Street,
Virudhunagar – 616001 ...Respondent No.4**
- 5. L.Saravanan
S/o. R.Lenin
A 30 Grahalaksmi Apartments, T.H
Road, New Washermanpet
Chennai – 600081 ...Respondent No.5**
- 6. M.Venkatesh Kumar
S/o. R.Mahesh Kumar
71 Muthusamy Street,
Virudhunagar – 616001 ...Respondent No.6**
- 7. R.Lenin
S/o Mr. Rathnaswamy Nadar
No.8, Patel Road,
Virudhunagar – 626 001 ...Respondent No.7**
- 8. L.Desigamani
W/o Mr. R.Lenin
No.8, Patel Road,
Virudhunagar – 626 001 ...Respondent No.8**
- 9. Athitya Kumar**

**S/o Mr. R.Balaji
T-11, 304, Esplanade,
75, New Vaidyanathan Street,
Tondiarpet
Chennai – 600 081 ...Respondent No.9**

**10. B.Ramkumar
S/o Mr. R.Balaji
T-11, 304, Esplanade,
75, New Vaidyanathan Street,
Tondiarpet
Chennai – 600 081 ...Respondent No.10**

**11. M.Rajesh Kumar
S/o.R.Mahesh Kumar
No.40, Muthusamy Street,
Virudhunagar – 626 001 ...Respondent No.11**

**12. L.Balaji
S/o Mr. R.Lenin
T-11, 304, Esplanade
Tondiarpet
Chennai – 600 081 ...Respondent No.12**

**13. Thangam Metal Cansprivate Limited
Represented by its Director
L.Balaji
17&26, Thiruvottiyur High Road
New Washermenpet,
Chennai – 600 081 ...Respondent No.13**

Present:

For Appellants: Mr. Bhargav Thali & Mr. Sougat Mishra, Advocates.

For Respondents: Mr. Ravi Raghunath, Mr. Raghav Rajeev Menon & Ms. Aakashi Lodha, for R-1 & 2. Mr. Rana Mukherjee, Sr. Advocate alongwith Mr. Shantanu Singh & Mr. L. Muralikrishnan, for R-12.

J U D G M E N T

(19th January, 2021)

PER : DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

These two appeals have been filed under Section 421 of the Companies Act, 2013 against the impugned order dated 26.06.2019 passed by National Company Law Tribunal, Chennai Bench (for short 'Tribunal') in Transferred Company Petition in TCP/159/2016 in CP/15/2015 under Sections 111A, 397 and 398 read with sections 402 & 403 of the Companies Act, 1956 and Sections 58 & 59 of the Companies Act, 2013.

2. Relevant facts for this appeal are that a partnership firm under the name and style of "Thangam Metal Cans" commenced business in 1994 in Chennai. The partnership firm was converted into a company by the name of "Thangam Metal Cans Pvt. Ltd" on 29.04.2004 and 9 partners of the firm as on that date namely Respondent No.1 to 7, 11 and 12 were allotted shares in proportion to their capital sharing in the partnership firm. The companies authorized and subscribed share capital was Rs.10,00,000/- divided into 1,00,000 equity shares of face value of Rs.10/-. The authorized share capital of the company was increased in 2006-07 to Rs. 34,00,000/- by way of 3,40,000 of equity shares of Rs.10/- each. The Respondent No.3 & 4 resigned from the post of the Directorship of the Respondent No.13 company in the Financial Year 2007-08. The company obtained financial assistance from City Bank Chennai in the form of working capital arrangement etc., to which

Respondent No.1 & 2 stood also as personal guarantors. The Respondent No.1 & 2 who were personal guarantors of those loans withdraw their guarantee in 2010 and they started their own business around the year 2008 and kept themselves aloof from the Appellant Company till 2015. The company again issued increased authorized share capital to Rs.1 crore divided into 10,00,000 equity shares of Rs.10/- in 2009.

3. As per the submission made by the Appellants that they convened AGM on 30.09.2011 after due approval and issued further 4,50,000 equity shares for which the Respondent No.1 &2 have a grievance. The Appellants have mentioned that with the withdrawal of personal guarantee of Respondent no.1 & 2, the Bank has started pressing to the company for increasing the share capital. As a result of which the Appellants, who were running the business, have increased the share capital which they are claiming has been done in accordance with law.

4. AGM held on 07.07.2007 stands as follows:

Name	No. of Equity shares
L.Balaji (A2)	35,000
R.Lenin(R7)	10,000
R.Srinivasan(R1)	60,000- (17.6%)
L.Saravanan (R5)	27,500
M.Venkatesh Kumar (R6)	8,500
M.Rajesh Kumar	9,000

R.Krishna Kumar (R2)	12,500 – (3.67%)
M.Ramkumar (R10)	50,000
Athithya Kumar (R9)	50,000
Daksha Kumar	50,000
L.Desigasigamani (R8)	27,500
Total	3,40,000

As on 30.12.2011 the following persons were allotted shares as follows, which has been objected by the Respondent No.1 & 2 and that has been annulled by the Tribunal:

Name of the allottee	No. of Equity shares	Issue price
L.Balaji	150000 Shares	15,00,000
B.RamKumar (R9)	100000 Shares	10,00,000
B.Adithyakumar (R10)	100000 Shares	10,00,000
B.Inimai (R11)	100000 Shares	10,00,000

Shareholding pattern of the Appellant company in 2011-2012 are as follows:

Name	Equity Share details			
	No. of shares	Percentage of holding	Face value per shares	Amount
L.Balaji(Director)	2,81,000	35.60	10	28,10,000
B.Ram Kumar	1,50,000	19.00	10	15,00,000
B.Adithyakumar	1,59,000	20.10	10	15,90,000

B.Inmai (Director)	1,10,000	13.90	10	11,00,000
R.Lenin	12,500	1.60	10	1,25,000
L.Desigasigamani	5,000	0.60	10	50,000
R.Srinivasan R1	60,000	7.60	10	6,00,000
S.Krishna Kumar R2	12,500	1.60	10	1,25,000
Total	790000	100.00		7900000

and the same has been challenged.

5. All these reflect that the shareholding pattern of Respondent No.1 & 2 has gone down from 21.27% to 9.2 %. The Appellants have submitted that there is ongoing family feud. As a result of this Respondent No.1 & 2 has challenged increased in share capital.

6. The following relief is prayed by the Petitioners (Respondent No.1 & 2 herein):

“(i) Declare that the increase in authorized share capital of the Company from 3,40,000 shares to 7,90,000 shares in 2011-12 as illegal and void.

“(ii) Direct the rectification of the Register of Members of the Company to reflect the issued and paid up capital of the company as 3,40,000 shares of Rs.10/- each as held by the original subscribers to the Memorandum of the Company.

Learned Tribunal, while passing the impugned order framed following issues:

Issue No.1 - Whether the Petition is time barred?

Issue No.2 - *If the answer is found in negative, then whether the increased authorised capital of first respondent company from 3,40,000 shares to 7,90,000 shares on 30.12.2011 is illegal and void.*

Issue No.3 - Reliefs

Learned Tribunal after elaborate discussion decided issues no 1 and 2 in favour of Petitioners (Respondent No.1&2 herein). Therefore, held that AGM dated 30.09.2011 by which authorized capital of Respondent Company was increased and allotments were made on 30.12.2011 in favour of the 5th Respondent, his two sons and wife i.e. 10th, 11th and 12th Respondents respectively, are declared as null and void for want of service of proper notice and absence of any offer to the petitioners. Consequently, all filings with the RoC with effect from 30.09.2011 to till date are hereby set aside and the shareholding pattern as per the table given at pages 8 &9 of the Petition and reproduced in the proceeding paragraphs wherein the number of equity shares is shown as 3,40,000 of Rs. 10/- each, stands restored. Accordingly, the Register of Members maintained by the 1st Respondent Company shall be rectified by the Respondents within a period of ten days reckoning from the date, on which the certified copy this order is received.

7. Being aggrieved with the aforesaid order the appellants have filed these appeals.

8. The Appellants in both the appeals have sought setting aside of the impugned order of the Tribunal dated 26.06.2019. Through Oral and Written

submissions, the Appellants assuming (on a demurrer) that even if the Respondents are granted relief in their favour, instead of the company going back by 9 years, let the allotment of shares be made to the Respondents in a way that their shareholding as on 30.12.2011 remain unchanged. This will save the Company from Financial and Administrative crisis.

9. While the Respondent No.1 and 2 have alleged that certain new facts have brought in an appeal which should not be considered. They are also shocked to know that their shareholding was diluted heavily without any intimation. They came to know about these irregularities after inspection of documents with RoC. They have alleged that the Appellant have inducted their family members including his wife into the Board thereby converting the Company into his personal fiefdom. They have also raised the issue of creation of charges on the assets of the **Company** by the Appellants to the Bank. They are challenging the issue of additional shares of 2011. The Company which was the family held company of all the sons of Late A.Rathinasamy. Nadar was converted into a family company of the L.Balaji -Appellant in Company Appeal(AT) No. 182 of 2019. The Respondent No.1 & 2 have even suggested for buying of shares by the Appellants of their shareholding at the price based on valuation by the expert valuers.

10. While Respondent No.1 & 2 vide Written Submissions dated 25.11.2020, Diary No.23729 at para 19 has submitted as follows:

“It is submitted that at the time of incorporation there were 4 branches of family of Late A.Rathinasamy Nadar in the Company, with most of the members being Directors and shareholders. However, presently only the branch of the Respondent No.1-2 and the branch of the Appellants in both the Appeals (with their children and parents) remain, and the latter holds majority shareholding and directorship (partly by buying out the rest of the family members and partly by the illegal allotment of shares to his branch). Thus, it would be inequitable to direct the Respondents No.1-2 to buy more shares and therefore, it is prayed that facts and circumstances, justify an order of valuation and buyout of the shares of the Respondents no.1 and 2 by the Appellants in both the Appeals.”

11. After hearing learned counsel for the parties, we have considered their submissions and judgments cited by them.

12. The Appellants have submitted that Respondent No.1 even after resignation from Directorship continues as Shareholders of the Appellant Company although with disassociation from the affairs of the company since 2008, they withdraw their personal guarantee at the time of distress of the company. While the Appellants have issued shares following the laid down procedure. There seems to be irregularities by the Appellants in dispatch of the notices for the AGM and the operation and mismanagement, the Respondents are claiming, is in respect of issue of shares in 2011. The Respondents never raised issue of increasing share capital prior to the filing of the present case before the Company Law Board, Chennai in January,

2015. The Appellants have also submitted that the Respondents have filed the Petition lately and carries deliberate delays and laches.

13. So far as the question of delays and laches is concerned, we agree with the finding of learned tribunal that if the alleged wrongful act is such that its effect in continuous course of oppression and there was no prospect of remedying the same then the tribunal is entitled to interfere by passing an appropriate order. The alleged increase of authorized share capital and allotment of share without proper notice to the petitioner is a wrongful act which has a recurring effect on the rights of the petitioners who are the shareholders. Thus, we hold that the petition is not barred by law of limitation and is maintainable.

14. While considering the impugned order, reversal of paid up capital to the level of Financial Year 2011-12 as also setting aside of all filings with the RoC w.e.f. 30.09.2011, the Appellant Company – Thangam Metal Cans Private Limited will have several commercial and legal complications including reversal of capital / reduction of capital will reduce the borrowing power of the company which it might have availed of and still to be paid of to the involved Bank of the company. While refiling for all these years w.e.f. 30.09.2011 to till date to the RoC will also involve unnecessary correction cost and refiling cost to the company. The interest of the company is of paramount importance as far as Section 397 & 398 of the Companies Act, 1956 as also Section 241 & 242 of the Companies Act, 2013 is concerned.

The same purpose in “just and equitable” manner can be served, if additional shares are issued to the Respondent No.1 & 2 to bring to their shareholding level to the same level as it was existing as on 07.07.2007 / 30.09.2011 and it will not hurt the company either in the form of additional financial burden or health of their overall business or to the Members/Shareholders for the relief they have sought.

15. The purpose of Section 397 and 398 of the Companies Act, 1956 as also Section 241 and 242 of the Companies Act, 2013, the Tribunal may with a view to bring to an end the matters complained of make such order as it thinks fit for the regulations of Conduct of affairs of the company in future.

However, the issue for consideration is whether annulling the allotment of shares and filing of all reports and returns with RoC from 30.09.2011 till date including setting aside the shares allotment which will affect the cushion of the bank for its Security for Loan will be in the interest of the company or not. The purpose equally can be served if shareholding pattern what was there as on 2007 is to be maintained by the company in the same proportion amongst the shareholders by issue of further shares to the aggrieved shareholders or others at the same rate at which it has been taken over by the Appellant will suffice the same purpose and will bring Respondents No. 1&2 at par at the level of its percentage Shareholding in 2007.

16. As far as purchase of shares of Respondent No.1&2 by the Appellants are concerned based on valuations by relevant experts it can be internally settled between the parties and cannot be part of this judgment as relief prayed for is different.

17. We have gone through the documents carefully including the citations and to bring the matter to an end, complained of in the interest of the Company in future the best course of action is to issue further shares to the Respondent No.1 & 2 at the level at which they are claiming to be in 2007 at the same price at which the appellant has purchased those shares as their shareholding has drastically come down from 21%+ to less than 10%. This is to be complied with by Appellants within a period of 3 months.

18. With the above observations, we set aside the order of the Tribunal and direct the parties to comply with the above observations. There shall be no order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member(Technical)

Raushan.K

New Delhi

Company Appeal (AT) No. 182 of 2019
Company Appeal (AT) No. 220 of 2019