

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
COMPANY APPELLATE JURISDICTION

Company Appeal (AT) No. 95 of 2017

(dated 14th March 2017 passed by National Company Law Tribunal, Hyderabad Bench in Company Petition No. 13 of 2013 in T.P. No.97/HDB/2016)

IN THE MATTER OF:

**M/s. Gowthami Solvent Oils
Private Limited & Ors.**

...Appellants

Vs

Mrs M. Bharathi Rao

...Respondent

Present: For Appellant:- Mr. K. Raghava Charyulu with Mr Kailash Pandey,
Advocates.

For Respondent: - Ms. Haripriya Padmanabhan, Ms Pooja Dhar and
Mr Zeeshan Diwan, Advocates.

J U D G E M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J.

This appeal has been preferred by Appellant/Respondent against order dated 14th March 2017 passed by National Company Law Tribunal, Hyderabad Bench (hereinafter referred to as Tribunal) in Company Petition No. 13 of 2013 in T.P. No.97/HDB/2016 whereby and whereunder the Tribunal while holding the 'oppression' by Appellants against Respondent/Petitioner – Mrs Mallina Bharathi Rao, allowed the Company Petition and passed the following direction: -

"20. For the reasons stated above, the Company Petition bearing No. 13 of 2013 (TP No. 97/HDB/2016) is allowed with the following directions:

- (i) We direct the Respondents to allot all the three rights issues shares comprising a total of 5250 shares i.e., 350 in 1991-92, 2100 shares in 1995-96 and 2800 shares in 2004-2005.*
- (ii) We direct the petitioner to pay the amount of Rs.13,65,000/- way of D.D to the Respondents within a period of four weeks from the date of receipt of copy of the Order and thereafter two weeks' time is granted to the Respondents to allot shares accrued through 3 rights issues to the petitioner and to rectify the members register.*
- (iii) We direct the Respondents No. 2 and 3, to pay cost of Rs. 50,000/- each to the Petitioner and the same is to be paid from their personal account."*

2. The Appellants have assailed the impugned judgement mainly on the ground of delay and laches on the part of the Respondent/Petitioner in seeking the relief.

3. The brief facts of the case is that the Respondent preferred the Company Petition under Section 111A, 297, 398, 402 and 403 and other provisions of the Companies Act, 1956, inter alia, seeking the response to either allotted or transferred shares in her favour to maintain her original shareholding percentage of 2.12% and to pay the Respondent all the dividends accrued in respect of the shares since the year 1991-92, 1995-96 and 2004-05 till date to which the Respondent would have been entitled and for surcharging the Appellants for the loss caused to the company on account of acts of 'mismanagement' and 'siphoning off funds' and to the acts of 'oppression' perpetrated by Appellants since 1999 onwards. The cost and expenses were also sought for from the Appellant.

4. M/s. Gowthami Solvent Oils Private Limited (hereinafter referred to as company) was incorporated on 22nd March 1974 of which the Respondent was shareholder having subscribed 350 equity shares of Rs.100 each during 1974 by paying total amount of Rs. 35,000/- (Rupees thirty-five thousand). According to

the Respondent, her shareholding in the company was 2.12% during the year 1974-75 which was brought down to 1.060% in the year 1992-95 and then to 0.2655%. Allegations of 'oppression and mismanagement' since then were alleged as noticed by the Tribunal. The Appellants, as noticed above, have not challenged the factual aspect but challenged the order on the ground of delay in re-opening the matter as were taken place since 1991-92.

5. Ld. Counsel for the Appellant submit that the Respondent had knowledge about Rights Issue of shares in the year 1991-92 but did not file any case. She has accepted that the appellant have paid an amount of Rs.5.6 lakhs in the year 1992 to the 2nd Appellant in cash. This payment to the 2nd Appellant made in the year 1992 was decided for the first time by the Tribunal, in the year 2017, without any explanation the ground to condone the delay.

6. It was further contended that the Appellant company issued Rights offer on 30.9.1995 i.e., during 1995-96 for the shareholders but no case was filed by the Respondent. The Respondent/Petitioner filed before the State Consumer Commission in O.P. No.26 of 1997 which was not entertained with liberty to Respondents to move before appropriate forum but even after the order was passed by the said Consumer Commission dated 29th November 1999, no application was preferred by the Appellant.

7. It was submitted that Respondent on the other hand filed a Civil Suit bearing No. O.S. No. 22 of 2000 before the Civil Court seeking declaration that that the Respondent will continue to be shareholder of the company, which was withdrawn whereinafter she filed Company Petition No. 7 of 2000 before the Company Law Board which was initially dismissed and then restored.

8. We have noticed that the order of the Company Law Board was upheld by Hon'ble High Court and Supreme Court dismissed the Special Leave Petition preferred by the Appellant on 30th October, 2011.

9. The name of the Respondent was restored as shareholder in the Books of the company on 11th April 2011 wherein after she received the benefits, including cost etc., pursuant to the order dated 19th January 2012 passed by Company Law Board.

10. It appears that the Respondent was not in a position to move any application under Section 397 and 398 of the Companies Act, 1956, as she had less than ten percent of share capital and she was not entitled to file petition in view of Section 399 of the Companies Act, 1956.

11. In this background, the Respondent approached the Central Government under sub- Section (4) of Section 399 of the Companies Act, 1956, to pursue the case, being a minority shareholder. The Central Government after considering the relevant facts and circumstances granted approval to pursue the application on 16th November 2012. There after the Company Petition was filed in the year 2013.

12. Ld. Counsel appearing on behalf of the Respondent highlighted the aforesaid facts and contended that the Respondent was not in a position to file a Petition under Section 397 and 398 of the Companies Act, 1956, as her share capital was less than ten percent which was brought down since 1991-92. For the said reason she had to move before other forum. Therefore, she moved before the State Consumer Commission, which passed an order in the year 1999 and thereafter a suit was filed by her in the year 2000 which was upheld Hon'ble Supreme Court. Ld. Counsel for the Respondent further explained the

delay by stating that she had no other option but to move before the Company Law Board which she moved in 1997 which was decided in the year 2000.

13. It was only thereafter, on legal advice, she approached the Central Government under sub- Section (4) of Section 399 of the Companies Act, 1956, and having granted permission on 16th November 2012 immediately filed the Company Petition under Section 397 and 398 of the Companies Act, 1956 on 2nd February 2013 (C.P. No. 13 of 2013).

14. Having heard the Ld. Counsel for the parties, we are satisfied with the explanation of the delay shown by the Respondent which was also accepted by the Ld. Tribunal. In this background if the Tribunal has condoned the delay and entertained the petition and decided the case on merit, no interference is called for.

15. We find no merit in this appeal, it is accordingly dismissed. However, in the facts and circumstances, there shall be no order as to cost.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

New Delhi
31st May, 2017