

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**COMPANY APPEAL (AT) NO.299 OF 2019**

[Arising out of Impugned Order dated 11th July, 2019 passed by the National Company Law Tribunal, Chennai Bench in Company Petition No. 17/2017 filed under Section 241 and 242 of Companies Act, 2013]

In the matter of:

1. S.P.Velumani
No.124, Makkiripalayam
Sowdhapuram, Tiruchengode Taluk,
Namakkal 638008
Tamilnadu, India.
2. V Prabha,
No.124, Makkiripalayam
Sowdhapuram, Tiruchengode Taluk,
Namakkal 638008
Tamilnadu, India.

Appellants

Vs

1. Magnum Spinning Mills India Pvt. Ltd
SF No.355, Varuthampatti Chinna Goundanoor Sankari,
Salem 6370303
Tamil Nadu
2. M. Parthiban,
No.3/930, Pillumadaikadu,
Kadachanallur Post Tiruchengode Taluk,
Namakkal 638008
Tamil Nadu
3. P Raju,
1-49D, Periakadu, Korakattampalayam,
Modamangalam Post,
Tiruchengode Taluk,
Namakkal 637 304
Tamilnadu.
4. P. Santhasivam,
1/101, Kadachanallur Post,
Tiruchengode Taluk,

Namakal 637 308
Tamilnadu.

5. A Natesan,
Patharai, Sowthapuram Post,
Tiruchengode Taluk,
Namakal 637 308
Tamilnadu.

6. R. Kaarthikeyan,
3/37, Vilankattur, Kadachanallur Post,
Tiruchengode Taluk,
Namakal 637 304
Tamilnadu.

7. P Chandrasekaran,
No.696, APT Road,
Eorde 638 003

8. P.c. Prabakaran,
S/o P Chandrasekaran,
No. 60, Nathakkadu,
Vediyarasampalayam,
Pallipalayam 638008
Erode.

Respondent

Present: Dr. K.S. Ravichandran PCS for Appellant.

Mr. R. Vidhyashankar and Mr. B Ragunath Advocates for Respondent No.1
to 8

J U D G M E N T
(24.06.2020)

Mr. Balvinder Singh, Member (Technical)

1. The present appeal has been filed by the Appellants under section 421 of the Companies Act, 2013 against the impugned order passed by National Company Law Tribunal, Chennai in C.P. No. 17/2017.
2. The Brief facts of the case are that the Respondent No. 1 is a closely held company incorporated on 29th October, 2010 under the name of

Magnum Spinning Mills Private Limited engaged in the business of running a spinning mill. The Company has seven directors. The Appellant No. 1 is a founder promoter, Director and a shareholder of the respondent No. 1 company holding 2,53,730 equity shares aggregating to 19.55%. The Appellant No. 2 is the wife of Appellant No. 1 who holds 30,000 shares in the same company aggregating 2.31% of the share capital of the company. The Respondent No. 2 to 7 are the other directors of the company which are close relatives. The Appellant No. 1 pointed out the bogus transactions and siphoning of funds taking place in the company is an act of Oppression and Mismanagement and filled a company petition in NCLT, Chennai which is dismissed and hence this appeal.

3. Appellant No. 1 submitted that the respondents had engaged in making bogus vouchers by booking bogus purchases of cotton and siphoning out money of the company in several ways including by showing as though cotton has come from the State of Gujrat and creating records as though cotton has been purchased at a higher price and also by showing and paying a higher transport charges. That there was a quarrel when the Appellant No. 1 caught that the Respondents were purchasing cotton from Andhra Pradesh but were showing as if it is purchased from Gujrat.
4. Appellant No. 1 also submitted that when he started questioning, the respondents with an intend to put an end to the intervention of the Appellant No. 1, decided to change the mandate for operating the bank accounts of the company and concocted a plan as if an alleged Board Meeting was conducted on 22nd August, 2016 and resolution were allegedly passed by which any two directors can operate the account.
5. The Appellant No. 1 also submitted that from 2010 to 2016, the Appellant was signing the cheque mandatorily. Not a single allegation against the Appellant. No valid reason was shown to justify the altering the mandate.

6. Appellant No. 1 also submitted that no such Board Meeting was conducted on 22nd August, 2016 and no notice was received by the Appellant No. 1. Such meeting per se invalid and liable to be set aside.
7. Appellant No. 1 also submitted that he raised his objection and he also informed the bank vide his letter dated 30th August, 2016 that he was not a party to the said resolution. He further requested the bank not to honour any instruments and instructions until further notice. Thereafter State Bank of India (“the Bank”) wrote a letter dated 8th September 2016 to the company asking for certain clarification as to the objection letter dated 30th August, 2016 of the Appellant No. 1.
8. Appellant further submitted that the bank has abruptly closed the issue and sent a letter dated 9th September, 2016, in reply to the letter dated 30th August 2016 of the Appellant No. 1. The bank accepted the alleged board resolution dated 22nd August 2016 and closed the issue, advising the Appellant No. 1 to approach the very same persons who had oppressed the Appellant No. 1.
9. Appellant No. 1 further submitted that he has given his personal property worth more than 5 crores as collateral security for the credit facilities availed by the company. He has also given personal guarantee for the loans availed by the company and he who worked for the betterment of the company was oppressed and sidelined.
10. Appellant No. 1 contended that the Respondents have cooked up records to show as if there were Board Meetings and Annual General Meeting (AGM) were held and as if accounts were approved by the Board and AGM in the year 2016. The Appellant No. 1 being the director cum shareholder never received any notice neither for any of the Board Meeting nor for the AGM.
11. Appellant No. 1 also contended that presently the stake of the Respondent no. 2 to 7 is 77%, they are the six out of seven directors in Board, on an average representing 12.9% each. However, there are not less than 3 directors who hold 10% or less and still enjoy a directorship. In this situation a proportional representative is an appropriate remedy to operate as a check when the majority control showing tendencies to

run the management of the affairs of the company according to their whims and fancies excluding the petitioners from the management though they are rightfully entitled for the same. The company being in the nature of partnership, a proportional representation should be introduced in the composition of Board of Directors of the Company.

12. Appellant No. 1 submitted that after pointing out all these oppressive acts of the Respondents before the Tribunal that no notice were received by the Appellants and during the pendency of the company petition in CP No. 17 of 2017, on 21st August 2017 the Appellant No. 1 received a notice and agenda for the Board Meeting scheduled to be held on 31st August 2017 to which he sent a letter on 25th August 2017 to the Board of Directors of the company raising various objections with regard to the meeting but he did not receive any reply to that letter.
13. Appellant No. 1 further submitted that on 31^s August 2017 he received the seventh Annual Report of the company along with the notice of AGM proposed to be held on 30th September 2017. To the shock of the Appellant No. 1 the Board's report attached with the Annual Return showed that the Board of Directors of the company has met 5 times in the financial year for which no notices of any of the Board Meetings was given to the Appellant No. 1 being a director.
14. Appellant No. 1 also submitted that on 26th September 2017 the Appellant No. 1 sent an email to the Board of Directors of the Company, recording all his objections with respect to the AGM proposed to be held on 30th September 2017. The Respondents without considering the objections raised by the Appellants conducted the AGM on that date and also filled the Form AOC-4(XBRL) with ROC on 26th October 2017.
15. The Appellant No. 1 further submitted that since his personal properties have been given as collateral to the credit facilities sanctioned to the company. The State Bank of India sent a letter dated 29th August 2017 to the Appellant No. 1, requesting him to sign and return the arrangement letter and other documents. The Appellant No. 1 in his reply dated 6th September 2017 to the Chief and Relationship

Manager of the State Bank of India objected that the Board Resolution passed on 22nd August 2016 is not valid and a case is pending before NCLT, Chennai Bench challenging the validity of the Board Meeting held on 22nd August 2016 and other allegations against the other directors of the Company, thereafter the Appellant No. 1 is not inclined to sign the documents until the disposal of the same.

16. Appellant No. 1 further submitted that all the employees including the staff in accounts department have been instructed not to speak to the Appellant No. 1 and not to pass on any information whatsoever. It is practically a sort of ostracizing the Appellant and making his presence in the Company's office disgusting for him that he will not attend office.
17. Appellants also raised the questions: no board approval for the construction; no approval of the local authority; short term working capital funds have been diverted and unauthorised construction on poramboke land could result in demolition and waste of funds of the company.
18. It is also contended by the Appellant No. 1 that for the above stated reasons the affairs of the company are being conducted not only in a manner oppressive to the Appellant but also prejudicial to the interests of the Company and its shareholder.
19. Having aggrieved by the order of NCLT, Chennai Bench the Appellant prayed for the following relief:
 - a) Allow the Appeal and set aside the impugned order dated 11th July 2019 passed in CP No. 17 of 2017 passed by the NCLT, Chennai in the matter of S.P. Velumani and another vs. Magnum Spinning Mills India Private Limited and others and allow the prayers in the Company Petition.
 - b) To pass such other orders which as this Hon'ble Appellate Tribunal may deem fit and proper in the circumstances of the case and thus render justice.
20. The Respondent No. 1 filed its reply and stated that while the Appellant have claimed alleged irregularity in respect of certain

payments, the Appellant was estopped from challenging the transaction ex facie, as the relevant purchase documents have been pursued and passed for payment only by Appellant No. 1 and cheques also issued only by the Appellant No. 1. The Appellant has raised the issue for the first ever time only in 2017 in the Company Petition and has not raised the issue in any prior correspondence.

21. It is further stated on behalf of Respondent No. 1 that there is no contractual arrangement or promoters' agreement or Articles of Association mandating that the Appellant No. 1 should remain compulsory signatory for operating bank account.
22. It is further submitted by the Respondent No. 1 company that no case is pleaded or made out under the revised mandate of bank account operating, Respondents have misused such power or misappropriated any funds. On the contrary the performance of the company has significantly improved year to year.
23. It is further pleaded on behalf of the Respondent No. 1 that the company vide Article 1, specifically adopted Regulation in Table A of Companies Act, 1956 Regulation 70 of Table A vest power in the Board to determine who shall operate the bank account of the company.
24. It is further stated that under the revised mandate any two directors of the company can sign the cheque. This is democratic arrangement. What Appellant No. 1 wants is concentration of power and authority in himself and wants to be autocratic. Even in past, there have been instances when the company has authorised directors other than Appellant No. 1 to operate accounts. Therefore, Appellant cannot claim any exclusive right to operate bank account. Minority shareholder claiming exclusive right to operate bank account and contending that not allowing such operation, amounts to oppression is in extreme argument.
25. It is also submitted on behalf of the Respondent No. 1 Company that Appellant No. 1 attended the meeting, and CCTV footage was also submitted. The Appellant No. 1 signed the incoming/outgoing register and also signed various vouchers of the company in the mill premises

on the said date. This will also show that he attended the meeting. The decision concerning operation of bank account is a majority decision having an approval of 80% shareholders and 20% shareholder seek to override the majority in the said regard.

26. It is argued on behalf of the Respondent No. 1 that on assuming without admitting, if there was any irregularity concerning the convening or holding of the meeting, the decision of the majority is capable of ratification and so no interference by the Tribunal is warranted.
27. It is also stated by the Respondent No. 1 Company that it is a practice of the company to send notice of meetings through emails. Appellant has habit of attending meetings and not signing the attendance register. CCTV footage and photograph of Appellant No. 1 attending several meetings are submitted. In fact, on the same date as the meeting was held, the Appellant No. 1 has signed vouchers at the registered office of the company.
28. It is further stated that notices for Board Meeting on 22-11-2018, 21-04-2018 and 19-08-2018 were sent by RPAD. In fact for the Board Meeting on 20-02-2019, notice was again sent by RPAD. The Appellant No. 1 casually asked for an adjournment of the meeting or in the alternative sought for leave of absence. The conduct of the Appellant stands further exposed thereby.
29. It is further submitted on behalf of the Respondent No. 1 Company that on the Accounts/Balance sheet for the year 31-03-2016, where specific contention is raised that this was not discussed at the Board, it is submitted that at the Board meeting on 22-08-2016, the Balance sheet was passed and notices for such meeting was issued. Even when the Annual report was sent by RPAD, the Appellant made a false allegation of non-receipt and so, the Balance Sheet was shared again by email. Therefore, Appellant is hell-bent on creating nuisance will be apparent.
30. It is further submitted that Appellant took the extreme step of writing to the bank and stopping bank account operations resulting in

delay/default in paying statutory dues. Appellants themselves admit that appellant refused to sign bank renewal documents and caused serious hardship to the company, leading SBI issuing notice cautioning stoppage of account if renewal documents are not signed. The Appellant by his conduct caused SBI to increase interest rate as a penal step owing to non-execution of documents, as evidenced by Statement of Accounts and eventually company had to move from SBI to a new banker excluding the petitioner from requirement of personal guarantee and his personal property security and the sanction advice issued in this regard.

31. It is further stated by Respondent No. 1 that on alleged construction in Poramboke land, confirmation by Chartered Engineer/approved Surveyor that there is no encroachment but only compound wall is constructed and the reason is that there were serious undulation leading to injury to cattle and personnel. And also it is for the appropriate local authority of State Government to take action and no such action is taken till date which would evidence that the Respondents are not guilty of any misdeed.
32. Respondents denied the allegations that all other directors or the respondent No. 1 Company are related to each other. It is denied that there is any fraud or act of oppression that has been committed or that there is any intent to side-line the Appellant.
33. Respondents further contended that the Appellant has no bona fide case. His grievance is only because the autocratic veto right that he enjoyed was taken away and decision making was made democratic. The Appellant No. 1 could have cooperated with other directors and still continued to participate in bank operations, which was not to be the case. In any case if Appellant is restored to veto right in management or any proportionate right in board, he cannot work cohesively with the majority and he will not cooperate for renewing bank limits and day to day operations. Without prejudice therefore, even assuming without admitting the Appellant is entitled to any relief, it can only be for a

direction for the Appellant to exit the company at fair value to be determined by a valuer.

34. After having heard the averments made by the parties the NCLT, Chennai Bench dismissed the Company Petition stating that the acts complained of are not falling within the purview of Oppression and mismanagement. Being aggrieved by the said order of the NCLT the appellant has filed the present appeal.

35. The records of Appellant attending the meeting and the signatures put on the entry register shows that Appellant No. 1 was present at the registered office of respondent No. 1 Company, where the meeting was conducted. In that meeting the resolution was passed by the majority directors to regulate the procedure pertaining the signatories to the bank accounts of Respondent No. 1 Company, which is in no way oppressive as the decision relating to the Operation of bank account is within the domain of the Board of Directors. NCLT has rightly put its reliance on Judgement of NCLAT in **Upper India Steel Manufacturing and Engineering Co. Ltd. & Ors. Vs. Gurlal Singh Grewal & Ors.** where it was held that cheque signing power is solely a business decision and cannot be interfered. Further after the authority to sign the cheques has been revised we do not have any fact whether after the revision of the authority the appellant has been totally excluded or not from the operation of the account. In case a person is excluded positively not to have signed even a single cheque after the revision this could be colourable exercise. No evidence has been brought forth to make the change in authorisation to operate the bank account as a colourable exercise. Therefore, this contention has no weight.

36. The other allegation regarding the construction of buildings and superstructures using the funds of the company, without any approval of the Board and the competent authority was also rightly been dealt by the NCLT as Appellant had not placed any evidence on record to prove the construction. This is an isolated incident and in order to invoke provisions of Oppression and Mismanagement the acts of

oppression must be harsh and wrongful. An isolated incident may not be enough for grant of relief and continuous course of oppressive conduct on the part of the majority shareholders is, thus, necessary to be proved.

37. The contention of the Appellant that during the financial year 2017-18, an amount of Rs. 48,41,801/- has been written off as bad debts, while in the previous year it was nil and the details as to identity of the party, whether related party or otherwise is not disclosed. NCLT rightly observed that the decision of the Board of Directors to write off the bad debt is a commercial decision, which does not warrant any judicial interference.

38. In view of the above observation and discussion, we are of the opinion that the NCLT, Chennai has rightly held that the allegations made by the Appellants are baseless. We found no merit to interfere in the impugned order dated 11th July 2019 passed by the NCLT, Chennai Bench in Company Petition No. 17 of 2017 and the same is upheld. No order as to cost.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi
Bm