

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

[Arising out of Order dated (10th July, 2018) passed by the National Company Law Tribunal, Chennai Bench in T.C.P. No. 96/2016 (C.P. NO.42/2012)]

Company Appeal (AT) No.343 of 2018**IN THE MATTER OF:**

1.Universal Heat Exchangers Limited,
Represented by its Director Mr.Sunil Haridass,
Pollachi Road,
Mallumichampatti Post,
Coimbatore – 641 021

2.Mr. Sunil Haridass,
No.205, Tea Estate Compound,
Race Course, Coimbatore – 641 018

3. Mr.Nikhil Sunil,
No.205, Tea Estate Compound,
Race Course, Coimbatore – 641 018

4.Mrs.Manjula Sunil
No.205, Tea Estate Compound,
Race Course, Coimbatore – 641 018

5.Mrs.M.C.Mythili,
Old No. 149, No.205, Tea Estate Compound,
Race Course, Coimbatore – 641 018

6.Mrs.Mridula Sugadhan,
No.205, Tea Estate Compound,
Race Course, Coimbatore – 641 018

7.Deccan Radiators and Pressings Private Limited,
(Now known as Madras Radiators and Pressings Limited)
Represented by its Director Mr.Sunil Haridass,
Having its registered office at,

Pollachi Main Road,
Malumachampatti Post,
Coimbatore – 641 021

...Appellants

Vs.

1.K.Ramakrishnan,
Blk 808 No.07-149,
Woodlands street 81
Singapore – 730808

2. Mr.S.Visvanathan,
IC No. 413082, No.7,
Jalan Kemas Tamen Sri Setia,
Jahore Baru, Malaysia – 80300

3.Mr.V.R.Narayanamurti,
Block 204, Marsiling Drive,
12-192, Singapore – 730 204

...Respondents

Present:

**For the Appellants: Dr.K.S.Ravichandran, PCS and
Ms. S.Manjula Devi Advocate.**

**For the Respondents : Mr. Aditya Verma and
Mr. Shrey Patnaik, Advocates.**

J U D G M E N T

(08th January, 2020)

Dr. Ashok Kumar Mishra, Technical Member

The present Appeal has been preferred by the Appellants i.e. Universal Heat Exchangers Ltd and 6 others under Section 421 of the Companies Act, 2013 against the impugned order of National Company Law Tribunal (for short

“Tribunal”) Chennai Bench vide order dated 10th July, 2018 in T.C.P No.96/2016 (C.P No.42/2012) passed under Sections 111, 237, 397, 398, 402, 403 & 406 read with Schedule XI of the Companies Act, 1956.

2. The Appellants are aggrieved by the Tribunal order particularly with respect to set aside the allotment of shares made on 09th April, 2007 and 27th September, 2010 and to refund to the concerned allottees the amount received by the Appellant Company on account of the two share allotments that have been set aside to rectify the Register of Members after making refund of amount received against the allotment.

3. This is a case of the Appellants Company which was incorporated on 07th August, 1970 as a private Company with the name “Universal Heat Exchangers Private Limited” and the Company became a public Company in May 1980 and now the name of the Appellant Company is “Universal Heat Exchangers Limited” represented by its Director Mr.Sunil Haridass. Late Mr.A.P.Madhavan was managing the affairs of the Appellant Company and on his demise in 1985, thereafter his son Mr.Mahesh Madhavan took over the management of the Company affairs.

4. The Respondents herein are residents of Singapore and Malaysia and had invested Rs. 1,40,00,000/- (Rupees one crore and forty lakhs only) in the

Company in a single tranche and they were allotted, 4,00,000 equity shares of Rs.10/- each at a premium of Rs. 25/- and the same are detailed hereunder:

Sl No.	Name of the shareholders	Shares Allotted	% of shareholding held before 2007 and 2010 allotments of shares	% of shareholding held after the impugned allotments of share in 2007 and 2010
1.	K.Ramakrishnan- 1 st Respondent/ Petitioner	1,50,000	10	3.70
2.	S.Viswanathan – 2 nd Respondent/Petitioner	1,00,000	7	2.46
3.	V.R.Narayanamurti- 3 rd Respondent/Petitioner	1,50,000	10	3.70
	Total	4,00,000	27%	9.86%

5. This is a case of closely held public limited Company and the Appellant Company is engaged in the business of manufacturing and undertaking execution projects in the field of mainly Heat Exchangers, Condensers, and Evaporator etc. The Appellants have submitted that the Respondents were aware of the Extraordinary General Meeting (for short “EGM”) and also aware of valuation done by the Appellant Company including Annual Returns filed in the year 2007 and Form No.23 for the special resolution passed on 27th September, 2010. It has also been pointed out that the said Appeal was filed before the Company Law Board, Chennai on 17th April, 2012 only in spite of being aware of all the material facts the challenge to the allotment made on 09th April, 2007 and thereby it is hit by limitation and minority shareholders cannot wake up after 5 years and set at

naught past and concluded transactions. The Respondents were getting financial statement and AGM notices were furnished to the shareholders year after year but they have never bothered to take up the issue to the Appellants Company or its Directors. It is also elaborately explained that 20 Lakhs shares allotted on 09.04.2007 was at Rs.10/- per share and 5,55,555 shares allotted on 27.09.2010 was at Rs.18/- per share (includes a premium of Rs.8/- per share) and also submitted that a mere contravention of law may be illegal but not oppressive. .

6. The Respondents have objected to the allotment as stated supra in the year 2007 – 2010. The two allotments dated 09th April, 2007, the first allotment of 20,00,000 shares and 27th September, 2010, the second allotment of 5,55,55 shares, the Appellants' family's share has increased to 90.14% and the Respondents' share has been reduced to 9.86%. They have also submitted that they were not offered the right issue nor they have received notices for the EGM. The Appellants have dispatched the notice but not submitted any proof that the Respondents have received such notice. Hence, the notice in respect of right issue needs to be annulled. They have also submitted various oppression and mismanagement issues like:

- a) In the year 2009-10 the Appellant Company has taken unsecured loans from Directors and Shareholders to the tune of Rs.8.96 Crores but the same

year the Company has granted loans to parties covered under Register maintained under Section 301 of the Act to the extent of Rs.4 Crores.

- b) Similarly in the year 2010-11, the Appellant Company has taken loans from interested parties to the tune of Rs.16.20 Crores and has diverted these funds. The Respondents are alleging siphoning of funds by the Appellant Company and the Directors.
- c) They have also alleged that selling price per unit that has come down drastically and not the raw material prices have gone up. The average selling price per Unit of Oil Collers etc., was Rs. 1,58,623/- for the year ended 31.03.2010, whereas it was Rs. 1,11,102/- for the year ended 31.03.2011, registering a decline of Rs.47,521/- per unit – a reduction of 30 % on the average selling price when compared to the previous year.
- d) Similarly, total administrative expenses have gone up to Rs.114 Lakhs, the other expenses has been shown as Rs.51 Lakhs, which is almost 50% of the total expenses.
- e) In the year 2009-10 the Company has been maintaining huge Inventory of 78.28% on sales. Inventory turnover was 1.28%.

So, the Respondents have mentioned multiple oppression and mismanagement issues.

7. We have carefully perused the pleadings of both the parties and extant provisions of the Companies Act, 2013/1956.

8. Both parties have cited certain judgments to substantiate their standing. We have gone through the various submissions made by both the parties and finally reached the conclusion that the minority shareholders are requiring exit from the Company but that cannot provide a ground for denying their right to subscribe additional shares in proportion to their share holding vis-à-vis that of the total paid up capital of the Company as required under Section 81 of the Companies Act, 1956 (Part III).

9. We have also observed that there are certain oppression and mismanagement. The relationship between the Majority Shareholders & Minority Shareholders are strained. Hence, there is a need for valuation report to be done by Registered valuer and the majority shareholders are free to buy the shares of the minority shareholders or otherwise.

10. We have also observed that the Balance Sheet from 2005 to 2008 reflects Reserve and Surplus is getting strengthened. However, parties have not submitted updated audited Balance Sheet, so that it can be commented upon.

11. In view of the aforesaid findings, we upheld the impugned order dated 10th July, 2018 passed by the National Company Law Tribunal, Chennai Bench and

the Appellants are directed to comply with the order of the Tribunal as stated therein. Accordingly, the Appeal is dismissed. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr.Ashok Kumar Mishra)
Member (Technical)

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New Delhi