

**BEFORE THE COMPANY LAW BOARD, NEW DELHI BENCH
AT NEW DELHI
C.P. No. 89(ND)/2009**

Present: B.S.V. Prakash Kumar, Member (Judicial)

In the matter of:

Companies Act, 1956 Sections 397, 398 read with Sections 402 & 403

And

In the matter of:

Ravinder Kumar Magoo

..... Petitioners

Versus

M/s AMA Enterprises Pvt. Ltd & Ors.

..... Respondents

Present:

The counsel for the Petitioners:

Shri Rakesh Kumar, Shri Aditya Nayyar, Shri Parmod Sachdeva, Advocates

The counsel for the Respondents:

Shri U.K. Choudhary, Sr. Advocate, Shri Himanshu Vij, Shri Abhimanyu Singh, Shri Satwinder Singh, Shri Nidin Gera, Advocate,

**Order
(Heard and pronounced on 18-12-2014)**

The petitioner filed this Company Petition u/s 397, 398, 401 & 402 of the Companies Act, 1956 against R1 company and its another Director Mr. Alessandro Malavolti (R2) alleging that second respondent sold the land of the Company at undervaluation and purchased new land without consent and knowledge of the petitioner, indulged in siphoning the funds of the company, diluted the petitioner into minority and not holding any valid Board meeting in the company. The petitioner submits, since the above acts of R2 being prejudicial to the interest of the petitioner and oppressive against him, he filed this CP seeking the reliefs as mentioned in the CP.



2. The petitioner submits that R1 Company, M/s AMA Enterprises Pvt. Ltd, was incorporated on 26.2.1999 having its registered office situated at Ludhiana (Punjab), with an authorised share capital of Rs.6 Crores, divided into 60 lac equity shares of Rs. 10/- each for carrying business of manufacturing tractor parts. The petitioner submits that he, being a Science graduate, having vast experience, started a partnership business for producing and selling engineered goods. While he was on that business, he came in contact with R2 an Italian citizen, who is also incidentally engaged in the business of producing, importing and selling engineered goods and equipments including tractor linkage parts, auto parts etc. And R2,s company called AMA Enterprises has a strong presence in many countries of the world. Since second respondent evinced interest in setting up his business in India as well, R2, along with the petitioner and another man called Mr. M.K. Chopra, set up a Joint Venture Company i.e. R-1 company, with 50% participation of R2, 25% participation each by the petitioner and Mr. M.K. Chopra. In pursuance thereof, these three entered into a JV Agreement, ever since the petitioner was running the management and financial affairs of R1 Company. However, in the year 2004, R2 advised the petitioner that it would be better if a permanent Chief Executive Officer was appointed for R1 company to manage the administrative and financial affairs in a more professional manner. Having the petitioner trusted R2, all of them mutually decided to appoint Mr. Rajvir Singh Rally as first CEO of R1 Company in the year 2004. However, in course of time, the petitioner realised that his role in the company gradually came down whereby he could not even assess as to what was happening in the company since 2004. Thereafter, in the year 2008, one Mr. K.S. Rekhi was appointed as the new CEO of R1 company in place of the erstwhile CEO Mr. Rajvir Singh Rally.

3. The petitioner further submits that R2, to elbow out the petitioner altogether from the company, made an offer for purchase of shareholding of the petitioner in R1 Company for USD 740,000 taking the aid of the Indian business partner Mr. M.K. Chopra on 7.5.2008. When the petitioner did not agree to the aforesaid proposal of R2, then R2 made this offer to another partner, Mr. M.K. Chopra, to achieve his objective of acquiring the shareholding of Indian partners in R1 company. Ultimately, R2 succeeded in acquiring the shareholding of Mr. M.K. Chopra. Not only this, R2



instructed the CEO of the company to report directly to R2 in respect to the financial and administrative affairs of R1 Company so that the petitioner would also ultimately transfer his shareholding to R2. In furtherance of his plans, R2 sent notice to the petitioner intimating that EoGM would be held on 8.9.2008 or 9.8.2008 to consider the relocation of factory unit and for selling the land and building of R1 Company situated at Village Rajgarh Road, G.T. Road, Doraha, Ludhiana, India. In the said EoGM, a resolution was passed for the relocation of the factory unit of R1 company authorising R2 to sell the existing land and building of R1 Company.

4. For having R2 had a mind to take over the full control of the company, he convinced the petitioner that the factory unit would need to be relocated to another location for setting up a plant with modernised machinery. Since the petitioner had absolute faith on R2, he agreed for relocation of the factory unit and for the sale of the existing land and building of the factory. The petitioner further submits when the company took a decision of sale of land and building of R1 company, the petitioner sent an e-mail on 9.7.2008 making an offer to R2 stating that he was ready to buy the land and building of the factory unit of R1 company for Rs. 5 Crores and further stating that in case higher bid was received by the company, the same might be intimated to the petitioner so that he could revise his minimum offer of Rs. 5 Crores to the land and building already agreed to sell. However, to the surprise of petitioner, on the same day i.e. on 9.7.2008, it came to his notice that R2 has already sold the land of the company to Mr. M.K. Chopra. On hearing R2 already sold the land to M.K. Chopra, the petitioner wrote another mail to R2 reiterating his stand for purchasing the property mentioned above. To which, he was given an impression that R2 was still looking for a suitable buyer to sell the property because R2 stated that the discussion with Shri M.K. Chopra was not intended for selling the land to Mr. Chopra. In the next sentence, the petitioner says that the correct fact was that R2 had already made a preliminary agreement for sale of the said land of R-1 company with M.K. Chopra on the date of EoGM without taking the petitioner into confidence as mandated in the said EGM. The petitioner submits he again communicated to the Board of Directors vide email dated 02.02.2009 that he was still willing to buy the Plant/Land of R1 company making an offer of Rs. 4/- Crores



and he was ready for negotiations. It was then the petitioner received a reply from R2 vide email dated 20.3.2009 informing that the said land and building of R1 company has already been sold to Mr Chopra. He submits that R2 sold the property without the consultation of Board of Directors and without disclosing the identity of the person to whom it was sold and the price at which it was sold. The petitioner says that he later came to know that this building was sold to none other than the erstwhile Indian partner Mr Chopra in October 2008 for Rs. 4, 28, 00,000/- which was less than the amount offered by the petitioner in July 2009.

5. The petitioner further submits that R2 purchased 25% shareholding of another Indian partner M.K. Chopra, in derogation of the terms and conditions of JV Agreement, especially against the Agreement that foreign investors should not hold more than 50% shareholding in the company. The petitioner further submits R2, despite the petitioner raised objection to this transfer, calmed the petitioner at that time saying that it was a temporary arrangement and in place of outgoing Indian partner, another Indian business partner be inducted in R1 Company. On his assurance, the petitioner agreed to allow the transfer of shares in favour of R2 without knowing the fact that transfer of M.K. Chopra's shareholding to R2 would dilute his shareholding. On seeing the unilateral and arbitrary approach of R2, the petitioner again wrote another email to R2 on 20.3.2009 to sell his shareholding to R2 and take an exit from R1 Company if consideration was paid on fair valuation. However, R2 had not responded to the offer, the petitioner says it might be with a view to create a situation that he would sell his equity to R2 at a distress sale.

6. The petitioner further submits he received an email from the CEO stating that Board meeting be held on 5.9.2009. When the petitioner asked for the Agenda of the notice, the CEO of the company sent an email on 4.9.2009 intimating holding of Board meeting on 5.9.2009 without annexing Agenda along with notice sent to him. When he attended the meeting, he raised objection against the Agenda of the meeting on seeing first item splitting the share certificates and transfer of those shares to AMA SPA Italy. The petitioner further submits that said agenda is contrary to the provisions of JVA, because JVA stipulates, if any transfer or split of shares is to take place, at least three months notice in advance has to be given to other



parties. No such notice had been given. The notice to the meeting dated 5-9-2009 not being supported by any Agenda, the meeting held on 5.9.2009, the petitioner says, is invalid in the eyes of law.

7. The petitioner further submits that R2 managed to file Form 8 with the help of digital signature of the petitioner lying with the company to show as if the petitioner himself filed Form by modifying charge over the property of the company.

8. The respondents' side replied to the submissions of the petitioner stating that the petitioner himself was a party to the decision, the company has taken a decision to sell the land of the company and authorising R2 to relocate the company, in the meeting held on 9.7.2008. R2 further says the petitioner and another Indian partner Shri Chopra were fighting against each other before this petitioner initiated this litigation. Since they were fighting against each other, Shri Chopra sold away his shareholding to R2, which the petitioner himself approved in the meeting held on 14.1.2009. Therefore, it will not now lie in the mouth of the petitioner to say that the transfer of shareholding in favour of R2 is without the consent of the petitioner.

9. As to sale of the property, R2 submits that the company already entered into a sale agreement on receipt of Rs. 1 Crore in the month of October 2008 and balance Rs. 3 Crores in the month of January, 2009 and the same was duly recorded in the provisional Balance Sheet for the quarter ending December 2008 and on the month ending of January 2009. When the petitioner had full knowledge of the deal of sale of land and building to M.K. Chopra, R2 says this litigation was raised with malafide motive.

10. R2 further submits that the petitioner himself signed on two e-forms No. 8 filed with the Registrar of Companies on 06.01.2009 for modification of charge whereby charge created on the said property was vacated and charge on new property was created. Apart from this, as to the allegation of under valuation, the respondent side filed a valuation report during the course of arguments stating that the value of land and building was Rs. 3,22,91,808/- whereas the land and building were sold at Rs. 4 Crores, at a price higher than the valuation determined by the valuer.



A handwritten signature in black ink, appearing to be 'S. K. Chopra', written in a cursive style.

11. R2 submits that the averments in relation to siphoning of funds are bald and not supported by any material evidence. The counsel of R2 says that the proposition of law says that the party who asserts fraud against the other has to place all the facts and proof thereof stating that the opposite party indulged in siphoning. There being no such evidence or pleadings, the counsel submit that plea is liable to be dismissed.

12. The respondent counsel further submits the petitioner herein is already a minority in this company, therefore, notwithstanding the fact such transfer is in violation of the terms of the JV Agreement, this transfer is not prejudicial to the interest of the petitioner. He further submits that the said split of share certificates was in full compliance with the provisions of Articles of Association of the company and the relevant provisions of the Companies Act.

13. The respondent counsel further submits that it is not true that Board meetings have not been held in the company because the company has been regularly holding Board meetings with the remaining two Directors. Since the petitioner himself stated that he stopped coming to the Board meetings, he could not say now that no notice was sent to him soon after disputes arose in between the parties.

14. R2 counsel adds further that no resolution so far has been passed by the company causing any prejudice to the interest of the petitioner herein. The petitioner himself has also not placed any resolution so far showing R2 or others caused prejudice to the interest of the petitioner. Therefore, respondent counsel submits that the petitioner is liable to be dismissed.

15. On seeing the pleadings and hearing the submissions of the counsel on either side, the points for consideration before this Bench are-

1. Whether the petitioner has given his consent for transfer of M.K. Chopra's shareholding to second respondent and whether it is valid.
2. Whether the sale made in favour of M.K. Chopra is valid or not.



3. Whether the second respondent indulged in siphoning funds of the company as pleaded by the petitioner.
4. Whether the transfer or splitting of shares in the name of the parent company of R1 Company is prejudicial to the interest of the petitioner.
5. Whether relocation of factory to another land purchased by the company is valid.
6. Whether there is any deadlock in holding Board meetings, as pleaded by the petitioner.

Point 1

16. The petitioner signed on the resolution passed by the Company for transfer of Mr Chopra's shares to R2 without raising any objection saying he has pre-emptive right or such transfer would be prejudicial to the interest of him, that time he must have signed to his convenience. Now his grievance is though he signed on the resolution, since such transfer being in violation of certain terms of JV Agreement, the said transfer of shareholding of Chopra to R2 shall be declared invalid. Before going to see whether such transfer is valid or invalid, I must deal with whether this petitioner who is party to the approval of the transfer has any entitlement to question it thereafter. To this, I honestly believe he has waived his right by approving such transfer in the resolution validly passed; he is estopped to question the same after making the transferee and transferor believe that petitioner had no objection to such transfer. This right he agitates has come into existence by an agreement between the parties, if the same has been contravened by their subsequent acts, the party to the earlier and later agreements could not question the subsequent act is in violation of the earlier therefore the same has to be set aside. There is no law saying transfer of shares inter se shareholders or outsiders is prohibited. In view of the same, first point as to transfer of shareholding from Chopra to R2 is decided against the petitioner.

Point 2



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

17. The petitioner himself attached the minutes of EoGM held on 9.7.2008 showing the presence of the petitioner and second respondent to the said meeting. From the said minutes, it is evident that the company accorded its approval to sell the existing land, building, machinery and other assets at Village Rajgarh Road, G.T. Road, Doraha, Ludhiana on fair market value to fund relocation and modernisation of the unit and it was further resolved in the same meeting that R2 has been authorised to take steps with regard to the relocation of the unit and sale of the existing land, building and machinery and other assets at Village Rajgarh and for infusion of funds into the company. The petitioner and R2 signed upon the minutes drawn on 9.7.2008. By seeing the minutes drawn on 9.7.2008, it is apparent that the petitioner agreed for selling the land giving authorisation to R2 to act expediently about relocation of the unit and sale of the existing land. In fact, the petitioner authorised R2 to file copy of this resolution with RoC at Jullundur. For having the petitioner himself took part in the meeting and signed on the minutes authorising second respondent to sell the land on authorisation given by the company and to relocate the factory on the authorisation given by the company, I do not find any merit in the inconsistent submissions of the petitioner saying that he gave consent to sell the property in the meeting dated 9-7-2008, again saying he made an offer to purchase the property for Rupees Five Crores when it came to his notice in the month of October, 2008 that R2 entered into a sale agreement with M.K. Chopra to sell the same property. For having the company already entered into an agreement with M.K. Chopra, how could the petitioner expect the company back out from the agreement already entered with M.K. Chopra by seeing an offer that had subsequently come from the petitioner.

18. The petitioner submits that when he came to know the company entered into an arrangement with M.K. Chopra to sell the property, he sent an offer to the company to purchase the land and building at Rs. 5/- Crores. It appears from the record, for having the company already entered into an agreement with M.K. Chopra to sell the property of the company, and for having the petitioner himself authorised R2 to sell the property, this petitioner could not subsequently say that he would offer more money than the money to which the company already agreed to sell to

