

BEFORE THE COMPANY LAW BOARD
KOLKATA BENCH

C.A. No.477 of 2014
in connection with
C.P. No. 186 of 2013

Present : Shri A Bandopadhyay, Member

In the matter of the Companies Act, 1956 (1 of 1956): Sections
235, 237, 247, 397, 398, 402, 403 and 406;

And

In the matter of : Ms. Sharmila Shetty

..... Petitioner

-Versus-

M/s. B & A Limited & Ors.

..... Respondents

And

In the matter of : Ms. Anuradha Farley

..... **Intervener/Applicant**

Present on behalf of Parties :

Shri S. K. Kapoor, Sr. Advocate
Shri Jishnu Saha, Sr. Advocate
Shri Sakya Sen, Sr. Advocate
Shri Subhojit Roy, Advocate
Ms. Sudeshna Bagchi, Advocate
Ms. Sanchali Chakravarty, Advocate

| For Petitioners

Shri S. N. Mookherjee, Sr Advocate
Shri Ratnanko Banerji, Sr. Advocate
Shri R. K. Rai, Advocate
Shri Nirmalya Dasgupta, Advocate
Shri Anunoy Basu, Advocate

| For Respondents

Shri Tilak Basu, Sr. Advocate
Ms. Lapita Banerjee, Advocate
Shri M. J. Ojha, Advocate

| For additional party



ORDER

(Dated : 30/09/2014)

In this order, I am considering C.A. No.477 of 2014 filed by Mrs. Anuradha Farley in connection with C.P. No.186 of 2013 filed by Sharmila Shetty against respondent company, namely, M/s. B & A Limited and other respondents under Sections 235, 237, 247, 397, 398, 402, 403 and 406 of the Companies Act, 1956 (the Act).

2. In the main petition, the following principle reliefs have been sought :-

- (i) Declaration that the petitioner is the sole and absolute owner of 8,61,918 shares held in Demat A/c jointly in the name of deceased father of petitioner and the petitioner herself.
- (ii) Declaration that any resolution passed at any shareholders' meeting of the company without serving a valid notice to the petitioner in accordance with the Companies Act, 1956, is illegal, void and unenforceable.
- (iii) Declaration that the resolution came to be passed in the Annual General Meeting (AGM) held on 6th August, 2012, with regard to amendment of the Articles of the company is bad, illegal, null and void and of no effect.
- (iv) Declaration that the affairs of the company ought to be investigated as regards the membership of the company and for the purpose of determining the true persons who are financially interested in the success or failure whether real or apparent of the company and who are able to control or materially influence the policy of the company.
- (v) All resolutions passed in shareholders' meeting of the company whether held on 22nd August, 2013 or any other day without having served valid notice to the petitioner in accordance with the Companies Act, 1956, be delivered to the Hon'ble Board and cancelled and rescinded.
- (vi) Other orders of injunction against the respondents.

3. In the instant company application, the main prayer of the applicant is for being added as party respondent in the instant proceedings.

4. The brief facts, as highlighted in the instant application, are as under :-



- i) The applicant's father was the promoter/director of respondent No.1 company. The applicant admittedly holds 4,800 equity shares in the respondent No.1 company.
- ii) The applicant's father Late Hemendra Prasad Barooah was the sole person responsible for setting up and expansion of the company. The applicant's father had three children, i.e., the applicant, the petitioner and Late Amit Barooah. The applicant's father Late Hemendra Prasad Barooah died on 31st July, 2013, the applicant's mother Late Usha Barooah died on 5th July, 2011 and the applicant's younger brother Late Amit Barooah died on 2nd October, 2007. During the tenure of the applicant's brother as the Managing Director of the company, the respondent No.2 became a Whole Time Director of the company. Both the father of the applicant and the brother of the applicant had immense trust and faith on the respondent No.2.
- iii) Till the time the applicant's father was alive, he was at the helm of the affairs of the company and the applicant did not participate or interfere in the company's administration and business on a day to day basis. During the tenure of the applicant's brother as the Managing Director of the company, the respondent No.2 became a Whole Time Director of the company. Both the father of the applicant and brother of the applicant had immense trust and faith on respondent No.2. The respondent No.2 is functioning as the Managing Director of the company since 2010, i.e., since the lifetime of the applicant's and petitioner's father and also their mother.
- iv) After the applicant's brother passed away on or about October 2, 2007, for operational convenience the applicant's father inducted the petitioner as the second holder in respect of 8,61,918 shares belonging to Late Hemendra Prasad Barooah. In view of the non-cooperation and the conduct not conducive to the interest of the company as well as the family, Late Hemendra Prasad Barooah thought of transferring all his assets including the subject shares of and in the company to Hemen Barooah Benevolent & Family Trust. When he tried to exercise his ownership rights in respect of the said shares and directed the petitioner to sign the delivery instruction slips so that the shares could be transferred to Hemen Barooah Benevolent & Family Trust created for the benefit of all the family members, the petitioner refused to do the same with ulterior motive. It is apparent that the petitioner wanted to usurp all the aforesaid shares for her personal benefit by depriving the



other legal heirs of Late Hemendra Prasad Barooah. In these circumstances, Late Hemendra Prasad Barooah was compelled to file civil suit being T.S. No.41 of 2012 before the Learned Civil Judge at Jorhat Court, inter alia, challenging the said illegal act of the petitioner.

- v) During the lifetime of Late Hemendra Prasad Barooah, another suit being T.S. No.47 of 2012 was also filed by the applicant and her father against the petitioner challenging the purported gift of 2,21,230 equity shares of Late Usha Barooah, which the petitioner is illegally claiming to be gifted to her. From the conduct of the petitioner it became amply clear that the petitioner is interested to usurp the entire family wealth for her personal benefit to the exclusion of other legitimate heirs of Late Hemendra Prasad Barooah. The applicant's father, in order to prevent such injustice and in order to protect the interests of all his heirs, filed T.S. No.41 of 2012 and T.S. No.47 of 2012 against the petitioner. The said shares of Late Usha Barooah is the subject matter of a trust, viz., Hemendra Barooah Trust, which was created by the applicant's father also for the benefit of all the family members.
- vi) The petitioner and her husband were also removed from the Board of Directors of the company. The petitioner was on the Board of Directors of the respondent No.1 company from 30.04.2010 to 19.09.2011. During the entire tenure of the petitioner's directorship, she did not attend even one Board meeting. The petitioner was never interested in the management and affairs of the company.
- vii) Since 2007, respondent No.2 has been a whole time director of the company. The petitioner's appointment letter on the Board of Directors was also signed by respondent No.2. During the lifetime of the petitioner's father, there was no challenge to the authority of respondent No.2 by the petitioner. After the death of the parents of the petitioner, in order to amass the entire wealth of late father's estate, the petitioner has initiated frivolous proceedings by way of company petition filed on 23rd August, 2013, immediately after the death of the father on 31st July, 2013.
- viii) The applicant has full trust in the management and control of respondent No.2. The applicant wants the shares of the company to be devolved upon all the legitimate heirs of Late Hemendra Prasad Barooah as per his wish. The applicant has been appointed as Director and Chairman of the Board of Directors on August 30, 2013 and since then she has



- attended most of the Board meetings that were held taking full interest in the affairs of the company.
- ix) The applicant is a proper and necessary party to the proceedings because her rights will be affected in the event that the petitioner is in the management and control of the company. In addition, rights of all other legitimate heirs of her father will be severely prejudiced. The applicant's father, during his lifetime, had no confidence in the petitioner and he disowned and disinherited the petitioner and her son from his estate which includes the said shares of 8,61,918 in the name of father of the petitioner jointly with the petitioner. The applicant's father reposed full confidence on respondent No.2 and other members of the Board of Directors of the company. The applicant's father appointed respondent No.2 as sole Executor of his registered will dated 17th September, 2012. Respondent No.2 is also the sole Executor of the last will and testament of Late Usha Barooah dated 8th September, 2009. Respondent No.2 is a trustee of both the trusts, namely, Hemendra Barooah Trust and Hemen Barooah Benevolent & Family Trust.
- x) Being the shareholder and director of the company, the applicant is necessary and proper party to the company petition. The applicant is eldest daughter of Late Hemendra Prasad Barooah. She is legitimate heir of her father and is entitled to represent her case. Therefore, the applicant is a necessary party to the proceedings and should be added because her presence is necessary to adjudicate the issues in the present proceedings and settle all the questions involved in the company proceedings.

Under the circumstances, it has been prayed that the name of the applicant be added as party in the instant proceeding being C.P. No.186 of 2013.

5. As against the above contentions of the applicant, the petitioner has submitted that the applicant being Anuradha Farley, elder sister of the petitioner, was never interested in the affairs of the company during the life time of her father. She has been set up by respondent No.2, i.e., Shri Somnath Chatterjee, to counter the allegations of the petitioner that no one from Barooah family is in the Board of the company and the affairs of the company are being managed by an outsider. In collusion and conspiracy with respondent No.2, the instant application has been filed by the applicant. The applicant is a puppet in the hands of Shri Somnath



Chatterjee (R-2) and is acting at his dictates. The purported appointment of the applicant as Director and Chairman of the Board of Directors was made after the institution of the instant proceedings and particularly after the allegations being made in the petition of non-inclusion of family member of Barooah family in the Board of Directors of the company. Most of the illegalities complained of in the instant petition took place prior to her purported appointment and no allegation has been made against her. The application has been grossly delayed being filed after more than 9 months of her purported appointment in the Board. The presence of the applicant in the instant proceedings will not be required for adjudication of the real disputes between the parties. It is humbly submitted that the applicant is not a proper and necessary party whose presence is required for adjudication of the instant case. Hence, the application for addition of party should be dismissed as an abuse of process of law with costs.

6. I have considered the above submissions and pleadings in course of hearings of the instant application. The applicant happens to be a shareholder and director in the present Board of Directors of the company. The applicant's father was the sole person for setting up and development of the company. During his lifetime, he was the Chairman and Managing Director of the Company and majority of the existing Board of Directors including respondent No.2 were appointed at his behest. Disputes arose between the father of the petitioner and the petitioner herself regarding joint shareholding of 8,61,918 shares on the ground that the father of the petitioner wanted to put the subject shares in the trust for the common benefit of all the beneficiaries of such trust, which the petitioner stiffly opposed and did not permit. As a result, late father of petitioner, during his lifetime, was compelled to file civil suit being T.S. No.41 of 2012 before the Learned Civil Judge at Jorhat Court challenging the said illegal act of the petitioner. The matter is still subjudice before the Hon'ble Civil Judge at Jorhat Court. In the petition, there has been main challenge about ownership of the subject shares asking for relief to declare the petitioner as sole and absolute owner of the subject shares. The petitioner has also challenged the amendment of existing Article 45 of Articles of Association (AoA) of the company and replacing the same with Article 43 causing prejudice to the interest of the petitioner. These issues involved including the ownership of gifted shares in favour of the petitioner to the tune of 2,21,230 shares claimed to be gifted by her mother, are pending in civil suits before the Ld. Civil Judge in Jorhat Court in T.S. No.41 of 2012 and T.S. No.47 of 2012



against the petitioner. The applicant is a legal heir of the estate of the deceased father and being director and shareholder of the company, her presence is required for effectively adjudicating and deciding on the questions and issues involved in the instant petition. Accordingly, I am of the considered opinion that the applicant constitutes necessary party for effective adjudication of the pending company petition and as a result, the prayer for inclusion of the applicant as a party respondent in the petition is hereby allowed. The necessary amendment of the petition may be carried out by the petitioner for effective adjudication in the said petition.

7. The company application being C.A. No. 477 of 2014 is allowed on the above terms with no order as to costs.



Sd/-
[A BANDOPADHYAY]
Member

CERTIFIED TO BE TRUE COPY

Hanno
HARTHARA SAHOO
BENCH OFFICER
COMPANY LAW BOARD
KOLKATA BENCH