

ATTENDANCE-CUM-ORDER SHEET OF HEARING


**COMPANY LAW BOARD
KOLKATA BENCH**

C.P. No. 17 (kol) / 2009

Present: Justice D.R. Deshmukh, Hon'ble Chairman

Date of hearing: 21st November- 2014, at 10.30 A.M

Name of the Company		Mangalesh Jalan. -Versus- Subarnarekha Trade & Tea Industries Ltd & Ors.	
Under Section		397/398	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1.	Tishnu Saha, Advocate	} for the petitioners	 Adv. 21/11/14
2.	Swrabhi Banerjee, Advocate		
3.	Sulagna Mukherjee, Advocate		

	Ma Sakya Sor, Advocate	} for Respondent No. 2	Debasi Dutta, Advocate Adv. 21/11/14
	Debasi Dutta, Advocate		

	M.L. Sanchari Chakraborty, Advocate	} for Respondent
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Arguments were heard.

2. In this petition under sections 397, 398, 402, 403 and 406 of the Companies Act, 1956 concerning the affairs of Subarnarekha Trade and Tea Industries Ltd. (henceforth the "Company") the only oppressive act alleged against the Respondents and pressed during arguments is the wrongful and illegal issue and allotment of 2600 shares of the company in favour of R-2 Shri Mukesh Jalan.

3. Shri Jishnu Saha learned counsel for the Petitioner fairly conceded that the Petitioner did not press relief (d) in para 7 of the petition which is as under:-

"(d) Declaration that the purported transfer of 370 shares of Mahabir Jalan to Respondent No.3 be also declared illegal and null and void."

4. According to the Petitioner, the company owns an undivided 2/3 share in an immoveable property being premises No.12, Burdwan Road, Kolkata. On 04.09.2006 the Petitioner held 1136 shares in the company out of total 6000 shares which were held by the patriarch Mahabir Prasad Jalan (379 shares), Mukul Jalan (1330 shares), Manglesh Jalan (1136 shares), Mukesh (1151 shares) and Mukesh executor to Lilawati Jalan (836 shares), Outsiders-Indian held (669 shares) and outsiders-NRI held 499 shares. According to the Petitioner, the affairs of the company at all times were managed and controlled by Mahabir Prasad Jalan and after his death on 21.5.2009 by his elder son Shri Mukesh Jalan. The challenge to the allotment of 2600 shares in favour of Shri Mukesh Jalan in January 2007 is founded on the following grounds:-

- a. The company is a closely held family company.
- b. The allotment not being in the nature of a rights issue, no need for generation of additional capital is shown.
- c. No other shareholder was offered proportionate equity in the company.
- d. The allotment of 2600 shares to Shri Mukesh Jalan was at face value of Rs.50/- each and that too for consideration in cash only.
- e. Being in the nature of a preferential allotment no special resolution was passed or EOGM called.
- f. No notice of the Board meeting on 02.02.2007 was given to the Petitioner and lastly.
- g. The allotment is oppressive to the Petitioner in as much as it reduces the percentage of the share of the Petitioner in the 2/3rd undivided share of 12, Burdwan Road, Kolkata.



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5. On the other hand, the Respondents contend that allotment was necessitated to save the company from being struck off by the ROC under Section 560 of the Companies Act, 1956 read with section 3(4) of the Companies Act, 1956 in the beneficial interest of the company. The allotment of shares took place in the Board Meeting held on 02.02.2007 during the life time of Mahabir Prasad Jalan. The Petitioner, though aware, never objected. The question of notice of the Board Meeting to the Petitioner did not arise since the Petitioner was not on the Board. The Petitioner has failed to demonstrate that the said allotment of 2600 shares to R-2 has created a situation in the company in which it may be just and equitable to wind it up. Admittedly Mahabir Prasad Jalan managed and controlled the affairs of the company throughout his life and after him Shri Mukesh Jalan, R-2 assumed control. Petitioner never participated in the management of the company. Despite the allotment having been necessitated and made on 02.02.2007 the Petitioner did not raise any objection during the life time of Mahabir Prasad Jalan and it is only after his death on 21.05.2009 that the Petition has been filed on 28.07.2009. Admittedly the allotment of shares was for consideration. No other shareholder had any grievance and treated it as a part of the family settlement undertaken by Mahabir Prasad Jalan and or in other words the desire of the Settlor i.e. Mahabir Prasad Jalan. The shares were allotted for consideration of Rs.1,36,000 which was admittedly paid by R-2 and accounted for in the books of accounts of the company. Since the company had no other asset excepting the 2/3 share in an immovable property 12, Burdwan Road, Kolkata the shareholders respected the desire of the Settlor in allotting 2600 shares to R-2. The petition is belated and there is no equity in favour of the Petitioner.

6. Having considered the submissions made by the counsel appearing on both sides and the written submissions and case law I am of the considered opinion that the Petitioner is not entitled to any relief for the following reasons:-

- a. Article of Association of the company does not confer any right of proportionate allotment.
- b. The company is a closely held family company and was solely controlled and managed by Mahabir Prasad Jalan till his life.
- c. The allotment of 2600 shares to R-2 during the settlement process by the Settlor Mahabir Prasad Jalan cannot be termed oppressive, harsh or burdensome to the



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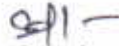
Petitioner since he did not raise any objection to the allotment till mid 2009 or in other words during life of Mahabir Prasad Jalan who died on 21.5.2009.

- d. Admittedly, the allotment of shares was for consideration duly accounted for in the account books. The Petitioner never participated in the management of the company and respected every decision made by the settlor Mahabir Prasad Jalan during his life time. The fact that the Petitioner did not even raise an eyebrow against such allotment during the lifetime of Mahabir Prasad Jalan bears testimony to such inference.
 - e. The petition is highly belated and there is no explanation forthcoming from the Petitioner for the inordinate delay in filing the petition.
 - f. An essential ingredient of section 397 i.e an existence of a situation justifying the winding up of the company does not exist disentitling the Petitioner to relief.
 - g. The question of issuance of notice of the Board Meeting to the Petitioner did not arise as the Petitioner was not on the Board of the Directors.
 - h. There is no material on record to substantiate that R-2 had fraudulently and illegally obtained approval from Mahabir Prasad Jalan for allotment of 2600 shares of the company in his favour.
 - i. In view of the fact that no objection was ever raised by the Petitioner against the allotment of 2600 shares of the company in favour of R-2 it cannot be said that the said allotment was oppressive, harsh or burdensome to the Petitioner even though the allotment might not be strictly in accordance with law, being the desire of the Settlor Mahabir Prasad Jalan who was distributing various assets, business and the immoveable properties to his sons by way of a final settlement. The Petitioner admits that intimation of such allotment in form No.2 and 23 was filed with the ROC after paying late fee of Rs.3000/- per filing on 9.1.2008. No reason has been shown for not challenging the allotment promptly even thereafter. No reason is shown by the Petitioner for remaining silent despite having knowledge of such allotment, till the death of Mahabir Prasad Jalan on 21.5.2009. Thus equity is not in favour of the Petitioner.
7. For the above mentioned reasons I am of the considered opinion that the challenge of the Petitioner to the allotment of 2600 shares of the company in favour of R-2 must fail as the Petitioner is disentitled to any equitable relief under the



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summary jurisdiction of this Board under section 397 and 398 of the Companies Act, 1956. As a result thereof the present petition fails and dismissed with cost.


[Justice D.R. Deshmukh]
Chairman
Company Law Board



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HARIHARA SAHOO
BENCH OFFICER
COMPANY LAW BOARD
KOLKATA BENCH