

**BEFORE THE COMPANY LAW BOARD, NEW DELHI BENCH
NEW DELHI
C.P. No. 40(ND)/2011**

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:

Harish Chaddha & Anr

.... Petitioners

Versus

M/s Natasha Automobiles Pvt. Ltd & Ors.

.....Respondents

Present:

The counsel for the Petitioners: Mr. Rajan K. Chaurasia, Advocate

The counsel for the Respondents: Mr. Vijay Nair, Ms Neeharika Aggarwal, Advocates

**Order
(Heard and pronounced on 01-04-2015)**

The petitioner filed this Company Petition against R1 Company and other Respondents u/s 397 & 398 of Companies Act, 1956, alleging that they were ousted from the Board and the company in the year 1989-90, though they held about 60% shareholding in the company since its incorporation. Since their ouster from the Board and the company being prejudicial to the interest of the petitioners, they filed this Company Petition against the respondents to restore them as shareholders and directors of the company by cancelling all the allotments subsequently made, hence this petition.



2. The petitioners submit, R1 Company was incorporated as a Private Limited Company on 7.1.1985 with its registered office located at Delhi. This company has come into existence to deal with the business of marketing automobiles with an authorized share capital of 5 lacs, having 5000 shares at the rate of Rs.100/- each, out of which, P1 subscribed 100 shares, R2 subscribed 100 shares, as to remaining 37 shares, the petitioners claim that P2 held those shares. (But whereas the petitioners have not revealed their share holding as reflected in the year 1989, in fact, the petition reveals that the petitioners held 1500 shares each in the company soon after incorporation of the company). Looking at the shareholding shown in the Reply to CP, the petitioners counsel admits that the paid up capital at the inception of the company was only Rs. 23,700/- as stated by the answering respondents.

3. The petitioners submit that R2 is husband of P1's sister, when P1 noticed that R2 was not doing well in his earlier business, to support R2 and his sister, P1 & R2 incorporated R1 Company naming it with petitioners daughter's name. In the said company, P1 had become Managing Director, his wife i.e. P2 had become one of the directors in the company. As they had an understanding that the petitioners would have controlling stake in the company, the petitioners continued with controlling stake with 60% in the paid up capital whereas R2 and his family continued with 40% stake in the company. The petitioners submit that P1 was very actively taking part in all spheres of business and attend all Board meetings till 1989. Since P1 has his own business in Delhi, he had started devoting most of his time at Delhi, thereby, P1 allowed his brother-in-law and his sister to run R1 company doing business at Bareilly. As he could not devote his time to R1 Company, the petitioners, believing his brother-in-law would take care of their interest as well, used to enquire about the affairs of the company on phone for they could not even attend Board meetings and General Meetings etc. after 1989. They further submit that they never received any dividend from R1 Company. They also submit, despite P1 being MD, P2 being director, for they being preoccupied with their own business, they allowed the answering respondents to hold meetings and meet day-to-day affairs for the sake of legal compliance.



4. Since these two families are closely related, the petitioners submit that the respondents alone used to sign Annual Accounts, Income Tax Returns and other documents. They further submit, the main purpose of forming this R1 Company being to assist R2 and his family, the petitioners became carefree after having established the business of R1 Company. They did not doubt the bonafides of the Respondents upto 2010. The petitioners found their share certificates of R1 company missing while searching their personal records in June 2010, then immediately P1 contacted R2 over phone and informed him about loss of share certificates and also asked him to issue duplicate share certificates in respect of the shares found missing. There was no response from the respondents to the request of the petitioners. When the petitioners failed to get duplicate share certificates, they caused legal notice issued to R1 Company on 27.12.2010 for issue of duplicate share certificates. When they could not get any response to the legal notice as well, they issued another notice on behalf of them on 17.1.2011. Finally, a reply had arrived to them stating that they had resigned as directors of the company and had sold their shareholding to the respondents in the year 1989 itself. The petitioners being surprised of looking at an answer saying they sold their shareholding and resigned from the Board, they made a search on the MCA Portal. It had become more shocking that these respondents increased authorized capital from 5 lacs to one crore, looking at the shareholders list, the petitioners noticed that the entire shareholding is being shown in the name of the respondents and their family members, their names were nowhere present in the shareholders list filed with RoC Delhi.

5. R2-R4, on seeing the petitioners demanding to restore the shareholding ante 1989, R4, son of R2, abused the petitioners in most filthy and defamatory language at a function in the family, for which also, the petitioners did not take any action against respondents or even R4 for he being a child grown up before them. The petitioners submit that P1 received messages on his mobile from phone No. 9837046339 from R4 on 9.10.2010 and 10.10.2010 abusing them in defamatory and obscene language. The petitioner annexed those messages as Annexure 'A' of the CP. The petitioners submit



that the respondents, in retaliation, lodged report with SHO Baradari, Bareilly against the petitioners to avoid any criminal case against them.

6. The petitioners, looking at the filings the respondents made, submit that the respondents forged letters as if P1&P2 resigned from the company and transferred their shareholding to R3 in the year 1989.

7. Having the petitioners failed to get redressal to their grievance to their legal notice, they filed this Company Petition seeking the reliefs as mentioned above.

8. The respondents filed reply stating that authorized share capital was 5 lacs having 5000 equity shares of Rs. 100/- each with paid up capital of Rs. 23,700 amounting to 237 shares. Out of which, P1 and R2 held 100 shares each and remaining 37 shares were held by other members in the company. R2 submits that the statement made by the petitioners, saying that petitioners held 1500 shares each out of the shares of the company is false because Rs. 5,00,000/- authorized share capital was divided into 5,000 shares, the paid up capital was only Rs. 23,700/-, therefore, this very statement saying the petitioners holding 300 shares is false. R2 categorically submits that P1 and R2 held 100 shares each, other members held remaining shares; therefore, P2 had no shareholding in the company at any point of time.

9. R2 submits, in the year 1989 when the business of the company as dealers of DCM Toyota went into heavy losses, P1 decided to exit from R1 Company. To ease the exit of P1 from the company, R3 was appointed as director in R1 Company with effect from 1.9.1989. On 20.10.1989, P1 and P2 tendered their resignations from the Board and Board duly accepted the same reflecting it in Form 32 filed before ROC Delhi. On the same day, P1 transferred his 100 shares in R1 company to R3 on receipt of consideration of Rs. 10,000/-. P1 having sold his 100 shares to his sister, he executed transfer deed and handed over the transfer deed, share certificate on receipt of consideration from the respondents. Since the petitioners did not want to continue in



the company, R2 shifted the registered office of the company from the place of the petitioners, i.e., Janakpuri, New Delhi to Mukerjee Nagar, Delhi. R2 says this office was shifted to make P1 free from having the registered office in his house; they shifted it to R2's daughter's house in Mukerjee Nagar, Delhi. To prove the same, R2 filed Form 18 before ROC, moreover, R2 filed some correspondence in between Income Tax authorities and P1 and in between P1 and R1 company in the year 1991 about P1 asking R1 company and R2 to intimate the change of address of registered office to Income Tax authorities so that P1 would not receive any letters from Income Tax authorities relating to R1 company.

10. R2 submits that the correspondence in between Income Tax authorities and P1 is showing an admission that P1 himself wrote to Income Tax Authorities that he was not continuing either as a shareholder or as director in R1 Company. R2 submits that P2 had never been a shareholder in R1 Company, the same is evident in the Annual Returns of 1986, 1987 and 1988, during which P1 & 2 admittedly continuing as directors and knowing what all happening in the company. R2 submits that since P1 delivered share certificate to the shares held by P1 in the year 1989, the question of share certificate missing does not arise. He also submits that it is preposterous to contemplate that petitioners, after 22 years, came to know that their share certificate had gone missing. He submits that they made this allegation to get illicit gain and to take avenging against respondents families owing to some differences emanated in a family function held in the year 2010.

11. R2 submits that for having P1 took exit from the company and the petitioners resigned as directors from the company in the year 1989 by signing off all the documents for exit from the company, the Respondents sought for dismissal of this CP.

12. The petitioner counsel, Mr. Ranjan K. Chaurasia, argued that the resignation letters shown as signed by P1 and P2 are forged letters, the signatures of P1 on the transfer deed is forged because these petitioners have never resigned from the company nor sold their shareholding to R3. He submits that none could make



transaction in cash in a Private Limited company. He submits that the Balance Sheet as on 31.7.1989 clearly shows that the company had only taken unsecured loan of Rs. 3,03,107/- from directors and Rs. 3,93,048/- from the shareholders to R1 Company. When the company owns fixed asset worth about Rs. 50/- lacs in 1989, no prudent man would transfer 100 shares for consideration of Rs. 10,000 when the company had paid up capital of Rs 23,700/- in the year 1989. He says many other anomalies are there in showing the petitioners took exit from the company. He further submits that the Folio number shown in the transfer deed is 40, whereas the filing made before ROC reflecting folio number as 41. Since the folio numbers shown in the filings and folio number in transfer deed not tallying to each other, this transfer deed has to be held invalid. He says this document of transfer deed is not only forged document but also an incorrect document not reflecting correct folio number, hence transfer of shares of P1 to R3 shall be held invalid. The petitioners counsel further submits that Annual Return of that year is showing the petitioners resigned as directors on 19-10-1989, whereas Form 32 showing the petitioners as resigned on 20.10.1989. Both dates are in variance to each other. The petitioners counsel also submits that there are so many material alterations in the Form 2 filed by R2 showing interpolation in relation to the amount paid and the dates. The petitioners counsel submits that the respondents filed Form-2 on 1.3.1990 showing somebody else's names brought in the place of P2. Therefore, on having the respondents' side indulged in acts prejudicial to the interest of the petitioners, the counsel has sought the reliefs as mentioned above.

13. The respondents counsel submits that when DCM Toyota business was in losses, these petitioners left the company in October 1989 by executing resignation letters and by transferring P1's shareholding to R3. They, in fact, made the respondents shift the registered office from the house of the petitioners to the house of second respondents' daughter way back in the year 1991. When the information in relation to shifting of registered office from the petitioner house had immediately not gone to Income Tax department, the Income Tax Department continued sending notices to old address of registered office situated at P1 house. On seeing such notices coming to P1, P1 wrote



two three letters to R1 Company saying to inform Income Tax authorities immediately that the petitioners not continuing in R1 Company and the registered office had been changed from petitioners' house to Mukerjee Nagar, Delhi. P1 indeed wrote a letter to Income Tax Department that he was no more director of the company and he had no stake in the said company.

14. On hearing the submissions of petitioners counsel and respondents counsel, the points for determination are:

- a) Whether the petitioners were illegally and fraudulently removed as shareholders and directors of the company as stated by them.
- b) Whether the acts complained of fall within the ambit of Sections 397 & 398 of the Companies Act, 1956.

15. On seeing the pleadings of the petitioners, it is evident that the petitioners were not sure at the time of filing this Company Petition as to how much shareholding they had in the company, they only confirmed the shareholding when the respondents counsel mentioned in their reply that company had only 237 paid up shares when P1 & R2 were promoters of the company. The petitioners submit P1 was the Managing Director; P2 was the Director of the company, together holding 60% stake in the company. However, on seeing the petitioners' pleadings, it is evident that they left the company in the year 1989. Their case itself speaks since R2 happened to be their Brother-in-Law, they left it to P1's sister and her husband i.e. R2, hoping that they would run it as family company without causing any prejudice to the petitioners. Despite knowing well that these respondents controlling the company since 1989 till they filed this CP, they never raised any objection to the management of the respondents in the company. They only woke up in the year 2010 and filed this Company Petition saying as if they realized something wrong happening in the company on seeing their share certificate missing. To prove that these petitioners have not been continuing as shareholders or directors of the company, the respondents placed resignation letters of P1 & P2 as Managing Director and director of the company on



20.10.1989. Not only that, these respondents filed a receipt dated 20-10-1989 given by P1 showing receipt of a consideration of Rs. 10,000 towards his 100 shares in R1 Company. These respondents today have shown original transfer deed and original share certificate showing that P1 transferred his shares and surrendered his share certificate to the respondents in the year 1989 itself.

16. In this historic background, how could it be construed that the petitioners living at Delhi lost their share certificate and they came to know of it only in the year 2010, and that share certificate gone into possession of R2 who lives at Bareilly? On seeing the Respondents in possession of share certificate, transfer deed, receipt showing consideration received by P1, resignation letters by the petitioners from directors and various forms simultaneously filed with RoC showing the exit of the petitioners from the company lock stock and barrel in the year 1989, therefore, the only inference that could be drawn and presumed is the petitioners on their volition left the company in the year 1989.

17. The respondents also placed some correspondence in between P1 and Income Tax Authorities disclosing that the company had registered office shifted from the house of P1 to the house of relative of R2 located at Dr. Mukherjee Nagar, Delhi. For having the registered office of the company simultaneously shifted from the house of P1 to the house of relative of R2, when P1 received some notices from Income-tax authorities, he wrote a letter on 7.12.1990 to R1 company asking as to why R1 company had not intimated Income-tax authorities regarding change of registered office and asked the company to take necessary steps so that the petitioners should not receive any notice from the Income Tax authorities or Registrar of Companies in respect of this company - in this letter written by P1, he categorically mentioned R1 company as the company of answering respondents. Even if it is presumed that P1 left everything trusting his brother-in-law, had the petitioners had any stake in the company in the year 1990, he would have not written letters to the Income Tax Authorities and R1 company saying he has no claim in the company and this company belonging to answering respondents.



18. The respondents placed a letter dated 5.3.1991 written by P1 to the Assistant Commissioner of Income Tax, New Delhi, saying that he had resigned from the directorship and membership of the company on 20.10.1989, therefore, P1 requested Income Tax Authorities to send notices to the company address at Bareilly. As to this letter dated 5.3.1991, it appears it was a letter bearing seal of Income Tax office. On seeing record of the respondents, I believe this Company Petition has come into existence not because there is some dispute between the respondents in relation to the affairs of the company - why I say so is the petitioners themselves filed some SMSs exchanged between P1 and R4 trading abuses against each other, may be for having R4 nephew (R4) sent some SMSs to his uncle (P1), he might have instituted these proceedings against the respondents. It is so coincidental that these SMSs were exchanged in the month of October 2010 and the petitioners opened up this litigation sending legal notices to the Respondents in the year 2010. Immediately thereafter, in the month of December 2010, the petitioners issued legal notice to R2 in relation to the affairs of the company.

19. This litigation being primarily on the ground of forgery of share transfer deed 22 years before, the petitioners could have raised this factual dispute before Civil Court, but they filed this CP on the base of some bald allegations over the transactions set to rest 22 years before. Moreover, the jurisdiction under Sections 397 & 398 is limited to the continuing acts taking place in a company. It is not a jurisdiction either to validate or invalidate the past actions of either management or somebody dealing with affairs of the company. The aim and object of Sec 397 & 398 of the Companies Act is to ward off the problems in managing the affairs of the company and to see the people dealing with the affairs of the Company not to cause any prejudice to the existing shareholders of the company. Though P1 set up a story saying the cause of action arose when he noticed that his share certificate found missing in the year 2010. On seeing the share certificate, transfer deed, receipt disclosing consideration being paid to P1 and on seeing the other correspondence showing the petitioner left the company in the year



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1989, heavy burden lies upon P1 to disprove the presumption the petitioners on their left the company in the year 1989, but P1 has not made any effort to prove the same except harping on bald allegations against the respondents. It is reiterated in Ammonia Supplies Corporation Private Limited (AIR 1998 SC 3153) that even if the dispute is on factual aspect, when Company Law Board is in a position to decide it on seeing the material available, CLB is conferred with jurisdiction to decide the same, on this ratio, seeing enough material to believe that the petitioners exited from the company in the year 1989, this Bench hereby held that the petitioners has no stake in the company since 1989.

20. The petitioner counsel submits that the transfer deed relied upon by the respondents does not have the same requirements as envisaged under section 108 of the Act 1956. In the Annual Return of 1990, the petitioners were shown as resigned on 19.10.1989; and shares were shown as transferred on 18.10.1989, whereas in the resignation letters relied upon by the respondents, the date of resignation was shown as 20.10.1989. When it comes to endorsement on share certificate, it was shown as transferred on 25.10.1989. These transfer dates are in variance to one another, so that, the petitioners counsel argues that none of these documents can be relied to say on what date shares were transferred.

21. The other contention of the petitioners is that the respondents had written off the shares of P2 by manipulating records. On the contrary, the respondents filed a list of shareholders attached with Annual Return of 1988 disclosing the signature of P1 wherein P2 is not shown with any shares. Therefore, on seeing the signatures of P1, on seeing the Annual Return of the year 1988 and on seeing correspondence in between P1 and Income Tax authorities and in between P1 and R1 company, it is evident that the petitioners left the company, not only as directors but also as shareholders, therefore, all these inconsistencies which the petitioners counsel trying to make out do pale into insignificance. After all, at the end of any case, the material placed by both



sides has to be weighed to see which evidence is believable and probable to reach to a conclusion.

22. On seeing the material placed by the respondents and by seeing the conduct of the petitioners remaining kept quiet for more than 20 years, it makes it clear that these petitioners left the company and the company even shifted its registered office from the house of the petitioner to the cousin of R2. Had really the petitioners been continuing in the company as shareholders, I do not think no need would arise for shifting registered office from the house of petitioners to relative of R2 and it is not the case of the petitioners that they were not aware of shifting of Registered Office. Therefore, for the reasons stated above, I hereby hold that the petitioners are not shareholders of the company they left the company in the year 1989, ever since they never interfered or enquired about the affairs of the company till 2010.

23. It is a family company set up by P1 and his sister's husband and it was in losses in the year 1989. On seeing the financial position of the company in the year 1989, it is clear that the company had paid up capital of Rs. 23,700/- whereas today it has paid up capital of the company is Rs. 90/- lacs having reserves of Rs. 1.5 Crores. By seeing the petition, it is clear P1 has not put any inputs in the company for the last 20-22 years and the Respondents have given their life to this company for the last 20 years.

24. Another argument of the petitioner side is that the company had a fixed asset worth of Rs. 40/- lacs in the year 1989, thereby it could not be assumed that P1 left the company by taking Rs. 10,000/- in cash towards his shareholding, that issue of 1989 could not be scrutinized under sections 397 and 398 of the Act on the allegation made in the year 2011, for it is trite law that under sections 397 & 398, it has to be seen whether the person in the management acting detrimental to the interest of existing shareholders and whether the present acts are in any way relatable to the past.



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25. The respondents pleaded in their case that the petitioners left the company on seeing R1 company making losses. The Directors Report of 1990 filed by the petitioners in their rejoinder in the year 2010 discloses the company was making losses in the year 1989-90 and that loss was brought forward to the following year. The petitioners stated that as per Balance Sheet of 1989, there was only unsecured loans of around Rs. 3/- lacs from the directors and Rs. 4/- lacs from the shareholders whereas the fixed assets of the company by that time was worth around Rs. 50/- lacs. Therefore, the petitioners say that the value of the shares of the company should be corresponding to the value of the company, which has Rs. 50/- lacs of assets. To which, the respondents replied that the company had various other loans from the Banks. If the loans are balanced against the assets of the company, the net worth of the company would hardly come to Rs. 40,000/-, in support of this contention, the respondents side has referred Directors' report of the year 1990 relied upon by the petitioners which discloses the company was making losses in the year 1989-90. Since the respondents referred to contemporaneous documents showing the company incurred losses in the year 1989, it cannot be said that company would be worth of Rs. 50/- lacs for there is fixed asset worth of Rs. 50/- lacs.

26. Over a period of 20-22 years, the company's authorized share capital has increased to Rs. One Crore with paid up capital of Rs. 97/- lacs, whatever efforts were made in the company are made by the respondents, whatever investments put in the company, have been put by the respondents for the last 20-22 long years.

27. The jurisdiction u/s 397 & 398 arises only when the management or the persons dealing with the affairs of the company acting detrimental to the interest of existing shareholders, but not to the persons who left the company more than 20 years ago.



28. Therefore, for the reasons stated above, I hereby hold that it is a frivolous litigation raised by the petitioners and it does not lie within the ambit of Sections 397 & 398 of the Companies Act, 1956, therefore this Company Petition is dismissed without costs.



(B.S.V. PRAKASH KUMAR)

Member (Judicial)

signed on 28th April 2015

New Delhi

प्रमाणित सत्य प्रतिलिपि
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Vikram Singh 28/4/15

विक्रम सिंह / VIKRAM SINGH
ब्याच पीएच अधिकारी / Branch Officer
कम्पनी विधि बोर्ड, Company Law Board
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On 28/4/15

