

BEFORE THE COMPANY LAW BOARD
CHENNAI BENCH
AT CHENNAI

Publications

CP No. 70/2012

Present: SHRI KANTHI NARAHARI, JUDICIAL MEMBER

IN THE MATTER OF THE COMPANIES ACT, 1956 (1 OF 1956)
SECTIONS 111, 397, 398, 402, 403 AND OTHER APPLICABLE
PROVISIONS
AND

IN THE MATTER OF M/S R.P. HOSPITALITIES PRIVATE LIMITED

BETWEEN

1. Mrs Manju Prabha Prasad Pillai
3160, Canyon Oaks Terrace,
Chico, California, U.S.A.

... PETITIONER

AND

1. M/s R.P. Hospitalities Pvt Ltd
"Aiswarya", TC 9/414, G-3,
Jawahar Nagar, Kowdiar P.O
Trivandrum
Kerala - 695 003.

2. Mrs I. Vijayambika
"Aiswarya", TC 9/414, G-3,
Jawahar Nagar, Kowdiar P.O
Trivandrum
Kerala - 695 003.

... RESPONDENTS

PARTIES PRESENT:

1. Shri. T.K Ananda Padmanabhan, Advocate
2. Shri. Venkat Challa, Advocate for
Shri. Anirudh Krishnan, Advocate

... For Petitioner

... For Respondents

CP/70/2012 - R.P. Hospitalities Pvt Ltd

5



ORDER

The present petition is filed under sections 111, 397, 398, 402 and 403 of the Companies Act, 1956 praying this Bench to direct the respondent company to issue shares i.e. 7,30,000 equity shares of Rs.10/- each and also to issue share certificate to the petitioner. Sought further direction to the respondents to recognize the petitioner as a director of the R1 Company and file Form 32 with the concerned ROC showing appointment of petitioner as director of the R1 Company.

2. The counsel appeared for the petitioner narrated the brief facts of the case. It is stated that the petitioner's husband Late Mr Ram V. Pillai, had subscribed 5000 shares of Rs.10/- each and 2nd respondent had subscribed 5000 shares of Rs.10/- each. The Late Ram V. Pillai was appointed as managing director of the 1st respondent company and 2nd respondent was appointed as a director of the 1st respondent company. It is further submitted that the petitioner had been inducted as an additional director of the company w.e.f 15.09.2006 and has also attended the Board meeting of the 1st respondent company which was held on 17.11.2006 subsequent to her appointment as director. Consequent to the demise of the petitioner's husband Late Sri Ram V. Pillai, on 29.11.2006, the 2nd respondent had taken over the management of the company and running the business till date. The company has not recognized the petitioner as director of the company. She has not received any notices of Board meetings and also notices of annual general meetings. The 1st respondent company had filed Annual Return with the Registrar of Companies shows that the company had convened annual general meetings on 30.09.2007, but the petitioner had not received any notice. The petitioner further submit that she had remitted an amount of USD 146,387.58 amounting to Rs.73.00 lakhs (approx.) to the 1st respondent company from her bank account namely, Bank of America, N.A located at 333, South Beaudry Avenue, Los Angeles, CA 90017, on 24.09.2004 for purchase of equity shares of the 1st



respondent company. The above remittance has been duly acknowledged by its managing director Late Shri Ram V. Pillai, vide receipt dated 09.10.2004. M/s. Sri Narayar Associates, Chartered Accountants have also confirmed that the 1st respondent company had received an amount of USD 146,387.58 as an advance from the petitioner for issue of an equity shares of the 1st respondent company vide their letter dated 09.10.2004 and also stated that the share certificates will be issued in one month time. So far the 1st respondent company had neither issued any share certificates to the petitioner nor refunded the amount with interest. It is further submitted that when the petitioner approached the 2nd respondent several times for issue of share certificates to the extent of amount remitted to the company, till date no response received from the company. The petitioner was kept completely dark with regard to the affairs of the company. The petitioner is not only director of the company but also wife of the promoter Late Mr Ram V. Pillai but she was not consulted in any decision taken by the 2nd respondent. In view of the reasons the counsel requested the Bench to grant the reliefs as prayed in the petition.

3. The respondent 1 & 2 filed counter statement to the petition. It is stated that the present petition is not maintainable either in law or on facts. The above petition, besides lacking merit and bona fides, is also bad in law, for being filed without any *locus standi*. The petitioner does not qualify to file the present petition under section 397 and 398 of the Companies Act, 1956 as the petitioner does not satisfy the criterion necessitated under section 399 of the Act. In the absence of share certificates issued to the petitioner, the petitioner cannot invoke the provisions of sections 397 and 398, in view of the express provisions contained in section 399 of the Companies Act, 1956. The petitioner is not a member of the 1st respondent; neither does she have any beneficial interest in the shareholding of the company. Any allegation pertaining to the recognition or otherwise as a director is completely outside the purview of the proceedings under

CP/70/2012 – R.P. Hospitalities Pvt Ltd



sections 397 and 398 of the Companies Act. The above petition is liable to be dismissed in limine on that count alone. The petitioner has miserably failed in discharging her primary duty and burden of proof that she is a shareholder of the company. Since she is not a shareholder, the above application has to be rejected on that count alone. The petitioner is not at all a shareholder of the 1st respondent. The claim of the petitioner is presently in the nature of a civil dispute to be taken to in any civil court having jurisdiction to consider the nature of the dispute to be resolved by any competent civil court having jurisdiction for adjudication. Thus this Hon'ble Company Law Board lacks jurisdiction to entertain the dispute now sought to be adjudicated by the petitioner. At this juncture it is worthwhile to note that an application under section 397 and 398 can be entertained only in respect of an alleged cause of mismanagement in the company. Ostensibly a complaint can only emanate from a member of the company. The petitioner is admittedly neither a member of the company nor a shareholder and as such the application is prima facie not maintainable and hence cannot be entertained. In the present petition, the petitioner has failed to produce any document as evidence for any agreement in writing to become a member and hence it is submitted there has been no agreement in writing given by the petitioner regarding the same. Hence the petitioner does not qualify to be a member as per section 41 of the Companies Act and thus has no *locus standi* to file the present petition under section 111 of the Companies Act, and the same is liable to be dismissed in limine. Further, the petition is bad in law, for being hopelessly barred by limitation. In view of Article 137 of the Limitation Act, the present petition ought to have been filed within three years from the date of payment of \$ 146,387.58, i.e. 24.09.2004. The present petition, being filed in 2012 is also bad in law on that count as well. In view of the reasons the counsel requested the Bench to dismiss the petition as not maintainable.



4. Heard the learned counsel appeared for the respective parties perused the pleadings and documents filed in support of their case. From the perusal of the petition it is seen that the petitioner has filed the present petition invoking the jurisdiction of this Bench under section 111, 397, 398, 402 and 403 of the Companies Act, 1956. Section 111 of the Companies Act, 1956, deals with the rectification of the register of members. As per sub section 1 of section 111, if a company refuses to register the transfer or the transmission of shares by operation of law of the right to, any shares or interest of a member of the company, it shall within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to transferee and the transferor or to the person giving intimation of such transmission as the case may be giving reasons for such refusal. Sub section 2 of section 111 provides an appeal by the transferor or transferee to the CLB against any refusal of the company to register the transfer or transmission of the shares. Under sub section 4 of section 111 any person aggrieved may apply to the CLB for rectification of register, provided if the name of any person is, without sufficient cause, entered in the register of members of a company or after having been entered in the register, is without sufficient cause, omitted therefrom. In virtue of above provision of law it is unequivocal that if a company refuses to register the transfer of or the transmission of shares by operation of law and if a company without sufficient cause entered in the register of member of the company the name of any person and after having been entered the name of a person in the register is omitted without sufficient cause the aggrieved person may apply to the CLB for seeking rectification of register of members.

5. In the present case it is not the case of the petitioner that she has subscribed for the shares of the company and the company having allotted the shares failed to register the petitioner's name in the register of members of the company and failed



to issue share certificates. It is not the case of the petitioner that the company refused to register the transfer or transmission of shares. Further it is not the case of the petitioner that her name was omitted therefrom the register of members after having been entered in the register of members. None of the above criteria is applicable to the facts of the present case. Therefore mentioning section 111 is misapplied.

6. The petitioner has invoked section 397 and 398 of the Companies Act, 1956. The main issue for consideration is whether the petitioner maintains the present petition and qualifies to fulfil the requisite criteria as contemplated under section 399 of the Companies Act, to invoke the jurisdiction of this Bench under sections 397 and 398 of the Companies Act, 1956. To file a petition under section 397 or 398 the requisite criteria as contemplated under section 399 of the Companies Act, 1956 has to be fulfilled. Unless and otherwise the requisite criteria is fulfilled the petition is not maintainable before the CLB. Section 399 of the Companies Act, 1956 is reproduced hereunder for better appreciation:

"399. (1) The following members of a company shall have the right to apply under section 397 or 398:-

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members."

7. As per the above provision of law only members of a company have the right to apply to the CLB under section 397 or 398 and not any other person.



Admittedly, the petitioner is not a shareholder of the company. Even if a person is a member or a shareholder has no right to apply under the above provisions of law unless and until he or she fulfils the requisite qualification in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members or any member or members holding not less than one-tenth of the issued share capital of the company. As stated supra the petitioner is not a member of the company and not holding any shares, i.e. not less than one-tenth of the issued share capital of the company. Therefore the petition is not maintainable. The filing of the present petition is an abuse of process of law and wasting the valuable time of this Bench. When the petition is not maintainable it is needless to go into the merits of the case. Even from the perusal of the petition, there are no purported allegations of oppression and mismanagement in the affairs of the company. As stated supra only a member of the company has the right to complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. It is pertinent to mention that the relief sought in the petition is in relation to seeking direction to the respondent company to issue shares to an extent of 7,30,000 equity shares of Rs.10/- each to the petitioner is concerned. I am of the view that the same is out of the purview of section 397 and 398 of the Companies Act, 1956. As discussed above, section 111 of the Companies Act, 1956 is misapplied. Therefore the petitioner has not fulfilled the requisite criteria as enumerated in section 399 of the Companies Act, 1956. The petition is not maintainable and liable to be dismissed. Accordingly, the CP No.70/2012 is dismissed. No order as to costs.



KANTHI NARAHARI
JUDICIAL MEMBER

DATED THIS THE 20TH DAY OF JULY, 2015

CP 70/2012 – R.P. Hospitality Pvt Ltd



Certified to be True Copy


Bench Officer
Company Law Board
Chennai Bench
Dated the 20.7.15