

**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 avenge 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.

