

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)**

**TA No.71/2021 (Comp. App. (AT) No. 248 of 2019/TR)
(Under Section 421 of the Companies Act, 2013)
(Arising out of the `Common Order' dated 26.07.2019
in C.P. No.07/2013 (T.P. No.43/2016) and C.P. No.09/2015 (T.P.
No.71/2016), passed by the National Company Law Tribunal,
Bengaluru Bench)**

In the matter of:

M/s. Pramerica ASPF – II Cyprus Holding Limited
11, Florinis Street, City Forum,
7th Floor, 1065 – Nicosia, Cyprus.

Also at:

Archiepiskopou Makariou III, 66
Kronos Building, 5th Floor,
Flat/Office 501
P.C. 1077 Nicosia,
Cyprus.

..... Appellant

v.

1. M/s. Metro Corp Infrastructure Ltd.

Registered Office at: 17,
Jayamahar Main Road,
Bangalore – 560 046.

..... Respondent No. 1

2. Shri Deepak Krishnappa

Director,
MetroCorp Infrastructure Ltd.
Resident of 120 R.M.V. Extension,
2nd Stage, 3rd Main,
Bangalore – 460 080.

Also at:

No. 8, Anriya Palatial Apartments,
Apartment No. 1501, 6th Cross, R.M.V. IInd Stage,
Bangalore – 560094.

..... Respondent No. 2

3. Mrs. Sushma Anandu

W/o. Mr. Deepak Krishnappa,
R/o. No. 120 RMV Extension,
2nd Stage, 3rd Main,
Bangalore – 460 080.

Also at:

No. 8, Anriya Palatial Apartments,
Apartment No. 1501, 6th Cross, R.M.V. IInd Stage,
Bangalore – 560094.

..... Respondent No. 3

4. M/s. Rajesh Exports Ltd.,

A Public Limited Company
Incorporated under the Companies Act, 1956
No. 4, Batavia Chambers,
Kumara Krupa Road,
Kumara Park East,
Bangalore – 560 001.

..... Respondent No. 4

Present:

For Appellant : Mr. P.H. Arvinth Pandian, Sr. Advocate
Mr. Aditya Kumar, Advocate.

For Respondents : Mr. Bharath, Advocate for R1 to R3.
Mr. Kirit S. Javali, Advocate for R4.

WITH

TA No.72/2021 (Comp. App. (AT) No. 247 of 2019/TR)
(Under Section 421 of the Companies Act, 2013)
(Arising out of the 'Common Order' dated 26.07.2019
in C.P. No.07/2013 (T.P. No.43/2016) and C.P. No.09/2015 (T.P.
No.71/2016), passed by the National Company Law Tribunal,
Bengaluru Bench)

In the matter of:

M/s. Pramerica ASPF – II Cyprus Holding Limited
11, Florinis Street, City Forum,
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..... Appellant

v.

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Also at:

No. 8, Anriya Palatial Apartments,

Apartment No. 1501, 6th Cross, R.M.V. IInd Stage,

Bangalore – 560094.

..... Respondent No. 2

3. M/s. R.A. Consultancy Private Limited

Shantiniketan Estate, 8 Camac Street,

Kolkata – 700 017, West Bengal.

..... Respondent No. 3

4. Mr. Subhash Banerjee

No. 17, Jayamahal Main Road,

Bangalore – 560 046.

..... Respondent No. 4

5. Mr. D.P. Biswas

No. 17, Jayamahal Main Road,

Bangalore – 560 046.

..... Respondent No. 5

Present:

For Appellant : Mr. P.H. Arvindh Pandian, Sr. Advocate
Mr. Aditya Kumar, Advocate.

For Respondents : Mr. Bharath, Advocate for R1 to R3.
Mr. Kirit S. Javali, Advocate for R4.

J U D G E M E N T

[Per; Ms. Shreesha Merla, Member (Technical)]:

1. Challenge in these Appeals viz. TA Nos.71 & 72/2021 (Comp. App. (AT) Nos. 247 & 248 of 2019) is to the 'Impugned Order' dated 26.07.2019 in C.P. No.07/2013 (T.P. No.43/2016) and C.P. No.09/2015 (T.P. No.71/2016), passed by the NCLT (National Company Law Tribunal, Bengaluru Bench), whereby and whereunder the NCLT has dismissed both the Company Petitions.

2. Facts in brief are that C.P.07/2013 was filed by the 'Petitioner'/'Appellant' herein before the Company Law Board, Chennai under Sections 397, 398, 399, 402, 406 & 542 of the Companies Act, 1956 (hereinafter referred to as the 'Act') seeking to declare the Meetings of the Board of Directors of the first Respondent Company/M/s. MetroCorp Infrastructure Ltd. (hereinafter referred to as 'MetroCorp'), held on 02.11.2009, 10.11.2009 & 25.10.2010 as 'null & void' and to declare the 'Mortgage Deeds' dated 10.11.2009, 19.11.2009, 02.11.2010 signed pursuant to the aforesaid Meetings as 'null & void' and ordered for cancellation of the said Deeds of Mortgage. It was also prayed to direct

the removal of the second Respondent from the Board of Directors of MetroCorp.

3. C.P.09/2015 was filed by the 'Petitioner'/'Appellant' herein before the Company Law Board, Chennai seeking to declare the Meetings of the Board of Directors of MetroCorp held on 30.07.2013, 30.08.2013 and 25.09.2013 as illegal as they were held in violation of Articles 86 & 87 of the Articles of Associations ('AoA') and further to declare the removal of the nominee Directors of the 'Petitioner' namely Mr. Surender Singh and Mr. Jason Van Hoong and the appointment of new Directors namely Mr. Subhash Banerjee and Mr. D.P Biswas as *non-est* and illegal. It is also prayed to set aside the increase of the authorized Share Capital of MetroCorp and direct the issuance and allotment of 90,00,000 Equity Shares in favor of the second Respondent as illegal and oppressive to the interest of the 'Petitioner'.

4. Succinctly put, facts in brief are that M/s. MetroCorp approached one '*Bekman Helix India Consulting Private Ltd.*' ('BHIC') for funds for development of a 'Residential Project' and BHIC in return approached the 'Petitioner', which is an 'Investment Company', to make a Foreign Direct Investment in the 'Real Estate and Infrastructure Business of MetroCorp'. Accordingly, the 'Petitioner'/'Appellant' invested a sum of Rs.110Cr./- by subscribing to Rs.2,20,000/- Compulsory Convertible

Debentures ('CCD') having a face value of Rs.5,000/- each on 25.02.2009. A 'Shareholder's Agreement', 'Put and Call Option Agreement' and 'Cash Management Agreement' was entered into between the 'Petitioner' and MetroCorp on 12.02.2009 to effectuate the FDI.

5. Learned Sr. Counsel appearing for the 'Appellant' submitted that in February, 2009, the 'Appellant' invested a sum of Rs.110Cr./- vide the aforementioned Agreements and appointed there nominee Directors but without providing any 'Notice' to the 'Appellants' or its nominee Directors and in contravention of the AoA, R-2 & R-3 conducted Board Meetings wherein they approved and executed Mortgages on the Assets of the Company in favor of the fourth Respondent. It is submitted that the Mortgages mentioned MetroCorp Samsara Housing Private Ltd. which is a family owned Company under the direct 'control and management' of R-2 & R-3 as the 'receiver' of the Mortgaged Funds.

6. The 'Appellant' has challenged four impugned Board Meetings 02.11.2009, 10.11.2009 & 25.11.2009, on the ground that no 'Notice' was issued to the 'Appellant' and further despite several directions by the NCLT vide Orders dated 11.12.2018, 10.01.2019, 05.02.2019 & 25.02.2019, the second and third Respondents have failed to provide any documentary evidence of 'Notices' having been served.

7. It is submitted by the Learned Sr. Counsel for the 'Appellant' that the Mortgage Board Meetings were not convened as per the AoA as Article 87(iii) of the AoA states that the quorum for the Board Meetings requires two Directors with at least one Director each from the 'Promoters' and the Appellant. If the quorum is not present within 120 minutes specified for the Board Meetings, it will have to be adjourned for seven days after the original date of the Meeting. If the quorum is not present again in the adjourned Meeting within 30 minutes of the adjourned Meeting, the Meeting will be adjourned to a date not more than five days from the date of the said adjourned Meeting. It is also submitted that, if the quorum is still not present at the second adjourned Meeting, then Article 87(iii) of the AoA will be disregarded; that there was no nominee Director of the Appellant present in any of the Mortgage Board Meetings as required for the quorum. Even if it is assumed that the Appellant's nominee Directors were absent, despite the service of the 'Notice', from the Mortgage Board Meetings, the AoA requires the Board Meeting to be adjourned as mentioned above. However, the Respondents have not submitted any evidence of the adjourned Meetings or that due process as detailed in the AoA was followed by the Respondents. Further, Article 140 of the AoA states that the R-1 Company will not be bound by any 'Resolution' or 'Transactions' and the 'Promoters' (R-2 and R-3) or

the 'Appellant' must not take any action to authorize the R-1 Company to be bound by matters relating to the 'consensus matters' unless either of the following conditions has been fulfilled i.e., a Board Resolution is passed with at least one Director appointed by one of the 'Promoters' and the 'Appellant', or if the transaction has been approved by one of the 'Promoters' and the 'Appellant' at a shareholders Meeting.

8. It is submitted that the creation of the mortgages falls within the ambit of Article 140(i) of AoA thereby, requiring the Respondents to mandatorily obtain the Appellant's consent through either of the above-mentioned methods. However, the Respondents secretly, without the Appellant's consent, created the mortgages. The Respondents have remained completely silent about the date of issue of 'Notices' for these above said Board Meetings, the dispatch of 'Notices', and mode of dispatch of 'Notices'.

9. It is argued that the charges under the Mortgage Deeds were not registered under Section 125 of the Act; that the audited Balance Sheet of MetroCorp as on 31.03.2010 is completely silent about these Mortgages; that these Mortgages were created just after 9 months on 10.11.2009, after the infusion of funds by the 'Appellant'; no document on the ICD Agreement are on record to support the Respondents claim that these Mortgages were executed to secure funding for the first Respondent; that

R-4 has not placed on record the money trail of payment to MetroCorp Samsara Housing Pvt. Ltd.

10. It is submitted that NCLT has failed to take into account that the documents filed by Respondents are fabricated as it can be seen from the 'Notice' dated 24.06.2013 for convening a Meeting on 30.07.2013 was issued by the second Respondent in his capacity as a Director and on the same date the alleged 'Notice' was issued by Members for convening an EOGM under Section 169(6) of the Act signed by R-2 and addressed to the Board.

11. There were no statutory filings made to the Registrar of Companies ('RoC') for increase in Share Capital, shares issued to Shareholders, transfer of shares or appointment of new Directors. NCLT has erroneously held that since the 'Appellant' was a majority Shareholder in control of R-1, R-2 could not have carried out the oppressive Acts as detailed by the 'Appellant'. It was not considered by NCLT that if a majority Shareholder is reduced to a minority by oppressive Acts of the Company, the said Act is termed oppressive by themselves. Learned Counsel placed reliance on the following Judgements in support of his submissions:

- *'IL&FS Trust Co., Ltd.' Vs. 'Birla Perucchini Ltd.'*¹.
- *'Cine & Supply Corporation (P) Ltd.'*².

¹ (2004) 121 ComCas335 (Bom)

- *'Dale & Carrington Invt. (P) Ltd.' Vs. 'P.K. Prathapan & Ors.'*³.

“24. Further, it was held that if a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its Board of Directors mala fide, the said act must ordinarily be considered to be an act of oppression to the said member. The member who holds the majority of shares in the company is entitled by virtue of his majority to control, manage and run the affairs of the company. This is a benefit or advantage which the member enjoys and is entitled to enjoy in accordance with the provisions of company law in the matter of administration of the affairs of the company by electing his own men to the Board of Directors of the company.”

- *'Rajendra Prasad Rungta' Vs. 'M/s. RMC Med. Ltd.'*⁴.

“56. The fiduciary capacity within which Directors have to act enjoins upon them a duty to act on behalf of the company with utmost care and skill and due diligence and in the interest of the company. More so, in a family company. They have a duty to make full and honest disclosures to shareholders regarding all important matters relating to the company. Shares issued for maintenance and acquisition of control over the company is an extraneous purpose, and therefore, cannot be upheld. The motive of change in the balance sheet of 2004 in the present case was malafide. On facts, the shareholding was changed with the sole object of gaining control of the company by becoming majority shareholders was an act of oppression on the part of the respondents. More so, as the meetings passing such resolutions were held at the back of the

² (2003) 115 CompCas481 CLB

³ 2005 (1) SCC 212

⁴ C.P. 34/2004

petitioners without giving proper 'Notice's and without following proper procedure. Regarding service of 'Notices', it is settled law that the onus to prove service rests on the sender. That onus has not been discharged. In view of above, the changed shareholding in the Annual Return of 2004 cannot be sustained and is required to be set aside.

57. The petitioners allegations that their group has been converted from a majority to a minority in shareholding and respondents representation in management has substantially been increased are found to be correct. In view of the continuous effects of such oppressive acts, to undo the effects and to regulate the affairs of the R-1 company in future, the present petition deserves to be allowed. A clear case of oppression has been made out, the conduct of the respondents have been harsh, burdensome, against probity and good conduct. Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide. The Respondents have been involved in continuous acts of oppression against the Petitioners and the present petition deserved to be allowed in favour of the Petitioners.

58. In view of the foregoing, C.P. No. 37 of 2004 stands allowed. The R-1 Company is hereby directed to restore the position of shareholding as reflected in its Annual Returns for the years 2002/2003 and allotment of shares to Respondents is hereby set aside, all Statements/ Statutory Forms filed in this regard with the ROC are held to be invalid, all resolutions passed in Board Meetings/ AGM/EOGM are hereby cancelled, the R-1 Company is hereby directed to rectify its Register of Members and Shares Register accordingly after taking into

consideration consolidating of equity shares in the name of the parties pursuant to the orders of Hon'ble Rajasthan and Calcutta High Courts sanctioning amalgamation of shareholder companies, considering the claims of the applicants for transfer of shares by duly constituted Board in compliance with this order. Further, the appointments of R-3, R-5, appointed as Directors despite protest by the petitioners is hereby set aside giving the majority shareholders in this family company their right of proportionate representation on the Board in accordance with the principle of legitimate expectation, the legitimate representation having been denied; the majority shareholders are, by virtue of being in majority, are entitled to control, manage and run the affairs of the company, this is a benefit or advantage which the members enjoy and are entitled to enjoy in accordance with the provisions of the Company Law in the matter of administration of the affairs of the company by electing their own men to the Board of Directors of the company, all Statements/ Resolutions/ Statutory Forms filed with the ROC with regard to appointments of R-3 to R-5 are hereby held to be invalid. All Company Applications stand disposed off. All interim Injunctions given stand vacated. No order as to cost."*

12. It is submitted that the filing of the second Petition, i.e., CP. No. 9/2015, before the NCLT, R2 proposed a possible settlement to the Appellant. The Appellant, R-1 Company, R-2 Director (i.e., Deepak Krishnappa), a third-party Purchaser (i.e., Sharadamba Developers Pvt. Ltd.) ("Purchaser") entered into the following agreements (collectively referred to as "Settlement Agreements"):

- (i) Share Purchase Agreement dated 29.09.2016 ("SPA");

- (ii) Memorandum of Understanding dated 29.09.2016 ("MoU");
- (iii) Escrow Agreement dated 14.02.2017 ("Escrow Agreement"); and
- (iv) Amendment Agreement to the SPA dated 05.02.2017 ("Amendment Agreement").

13. The Settlement Agreements specify that the 'Appellant' would sell its shares to the Purchaser through an Escrow Account; that prior to any such sale of the Appellant's shares, R-2, in his capacity as R-1's Director, would execute General Power of Attorney ("GPA") in favour of the Purchaser in respect of Plots of land detailed in Schedule B, Schedule C, and Schedule D of the SPA ("Settlement Plots"). The consideration received from the sale of these Plots would be used to fund the purchase of the Appellant's shares under clause 2.3.5 of the SPA, the parties agreed that these Plots should not be transferred or disposed of in any other manner; that R-1 would execute an unregistered GPA for three Plots of lands in favour of the Appellant (Schedule C of the SPA) ("Appellant's Security"). R-1 would also execute a registered special power of attorney, which would give the right to the 'Appellant' to register the aforesaid unregistered GPA.

14. The 'Settlement Agreement' was subject to the completion of certain conditions as detailed in the SPA ("Condition Precedents") and the Respondents and Purchaser were to provide documentary evidence regarding their completion to the Appellant:

- (i) Obtain permission from Bangalore International Airport Area Planning Authority for the sale of 52 Plots;
- (ii) Obtain nil-encumbrance certificates from appropriate authorities, which would confirm that no encumbrance exists on the Plots, and all other consents, governmental approvals, permissions, sanctions, and approvals as may be applicable and required;
- (iii) Pay all the provident fund dues and statutory dues; and
- (iv) Split the share certificates representing the ownership of the Appellant's shares in distinct share certificates of blocks of 1,000 shares each.

15. The 'Settlement Agreements' have been rendered meaningless due to the Fraudulent Acts of R-2 as the Plots, such were meant to finance the purchase of the Appellant's shares, have already been sold by the Respondents. Furthermore, two out of the three Plots that formed part of the Appellant's Security under the Settlement Agreements (Plot No. 230 and Plot No. 231) were also sold by the R-2 vide an 'Agreement to Sell'. Furthermore, these Agreements to sell have been witnessed by Mr. Sumeeth Sainatha who is a Director of the Purchaser. The Appellant submits, that even assuming but not conceding that the 'Settlement Agreements' are considered a compromise, any such compromise stands vitiated by fraud and can be re-examined as held by the Hon'ble Supreme Court in the matter of '**Compact Enterprises India (P) Ltd.,' Vs. 'Beant Singh'**⁵, dated 17.02.2021.

⁵ SLP 2224-2225/2021

16. The 'Appellant' vide its 'Counter Affidavit' to Respondents' Application dated 03.01.2019 had brought the Fraudulent Acts to the 'Notice' of the NCLT; however, the same was dismissed without any comments or observations in the Impugned Order. The 'Appellant' reiterated the Commission of the Fraudulent Acts before the NCLT vide its brief synopsis on the clarification sought and clarification submitted on 28.06.2019. The NCLT ignored Recital D of the MoU which clearly states that the parties through the execution of the Settlement Agreements had merely intended to settle the matters. The NCLT failed to take note that the parties had not approached the NCLT either to modify the 'Interim Order' or to record their settlement as required under the Settlement Agreements.

17. The first Respondent filed a 'Short Reply' stating that subsequent to the institution of the Proceedings before the NCLT there were Settlement Talks held between 'Petitioner' and MetroCorp and it was settled that vide a Share Purchase Agreement a third party entity would purchase all the shares of the 'Appellant' and the MoU would specify the consideration payable for the transfer shares and also settlements of the issues that were raised before the CLB. As per the Share Purchase Agreement dated 29.09.2016, the 'Appellant' as per Clause D has agreed to sell the shares in an as is where is condition to Sharadamba Developers

Pvt. Ltd. As per Clause 12.2 of the MoU the parties have agreed that all arrangements and Agreements entered into between the parties prior to the MoU are all superseded. The 'Appellant' and the first Respondent have agreed to resolve the subject matter by way of sale of shares and accordingly agreed to resolve the subject matter by making a 'Joint Application' before the NCLT. Therefore, under these circumstances, nothing survived under this 'Appeal'.

18. R-4, i.e., Rajesh Exports Ltd. submitted that M/s. MetroCorp Samsara Housing Pvt. Ltd. representing by its Managing Director i.e., R-2 approached this Respondent seeking ICD and upon conducting due diligence and following all required procedures, R-4 decided to give ICD to them upon the terms that MetroCorp mortgages its properties for securing the same. As per the ICD Agreement Rs.32,46,00,000/- was remitted to M/s. MetroCorp Samsara Housing Pvt. Ltd., subsequent to which MetroCorp passed Resolutions dated 02.11.2009, 10.11.2009, & 25.10.2010 authorizing R-2 to create a Mortgage in respect of the properties fully described in the respective Resolutions. R-4 places reliance on the Board Resolutions of MetroCorp Samsara Housing Pvt. Ltd. on the aforementioned dates, the Agreements entered into between R-4 and MetroCorp Samsara Housing Pvt. Ltd. on 10.11.2009, 19.11.2009 & 02.11.2010 and also depends on the declarations given in respect of the

ICD on these dates coupled with a Board Resolutions of R-4 dated 30.10.2009 & 23.10.2010 authorizing the ICDs to MetroCorp Samsara Housing Pvt. Ltd. read with the letter dated 25.01.2023 issued by Canara Bank reflecting the ICDs amount to paid to MetroCorp Samsara Housing Pvt. Ltd. in support of his submissions that ICDs were legally authorized.

19. As against the argument of Settlement, Learned Sr. Counsel for the Appellant submitted that there was only an intention to settle the matter but on account of the fraudulent Acts of the Respondent a 'Joint Application' was never filed before the NCLT to modify the 'Interim Order' so that the Respondents could sell the Plots and that this Agreement cannot be relied upon.

20. For the sake of brevity, the submissions made by the 'Appellant' Counsels are not being reproduced, to adjudicate whether there was any case of 'Oppression and Mismanagement' made out by them. The 'Appellant' was holding 75% of the Equity Shares of MetroCorp with two nominee Directors on the Board and had infused Rs.110Cr/- in the 'Residential Project'. It was the case of the Respondent in their 'Counter' filed before NCLT that the total amount which was promised and earmarked was Rs.180Cr/- out of which only Rs.110Cr./- was released and the balance Rs.70Cr/- was promised to be released within a period of two months thereon; that Mr. Manish Parwani CEO of BHIC and

Pramerica India in collusion with Senior Officials of the 'Petitioner'/'Appellant' made it clear that they were offering the Project funding to the tune of 300 Million USD for the 14 Projects being promoted by MetroCorp on the condition that the said funding would be by way of Mezzanine Equity at a cost of 18.50% in addition to a kick back in the form of 60% Equity stake for himself and the Senior Official of Pramerica in their private capacity. It is stated that Respondents 1 -3 were misled by the representations of Mr. Manish Parwani who was backed by Lawyers and Auditors of Pramerica USA and agreed to combine Phase – I and Phase – II Projects under a new SPV and also convinced that MetroCorp should be converted into a Public Limited Company for investing in CCDs. MetroCorp was holding a development of rights of Samsara Project Housing Pvt. Ltd. in which Respondents 2 & 3 were holding 99.9% Equity, but after incorporation of the first Respondent Company, R-2 & R-3 were compelled to part with 60% of the shareholding into one M/s. Quantum Reality Private Limited which was the front Company of Mr. Manish Parwani for holding their kick back stake in the Project; that though R-2 & R-3 were inducted as Directors in the Company 'Quantum' they were not allotted a single share. It is pleaded by the Respondents that despite repeated calls and requests to

Mr. Manish Parwani and the employees of the 'Appellant'/'Petitioner' for release of the second tranche, there was no response.

21. It is seen from the record that it is an admitted fact by the 'Appellants' themselves that Board Meetings were conducted on 29.10.2008, 25.02.2009, 23.06.2009, 02.09.2009, 27.12.2010, 18.03.2011, 05.10.2011 & 17.10.2011, but it is the case of the 'Appellants' that the four Board Meetings dated 02.11.2009, 10.11.2009 & 25.10.2010 were conducted without issuing proper 'Notice' and were not convened as Article 87(iii) of the AoA and that their nominee Director was not present only because due process of service of 'Notice' was not followed. It is seen from the record that the Board Meetings dated 02.11.2009, 10.11.2009 & 25.10.2010 which the 'Appellant' is strongly contesting are illegal, null & void, are the dates falling in between the aforementioned admitted Board Meetings and being a majority Shareholder the 'Appellant' has failed to adduce any evidence in support of his case that these Board Meetings were not conducted as per procedure of Law specifically taking into consideration that Mr. Jason Van Hoong, who has based in Singapore and China has not chosen to attend a single Meeting either personally or through video conference. Article 87(iii) of the AoA reads as follows:

“Subject to the provisions of the Act, all meeting of the board shall, throughout the meeting require

a quorum of at least two (2) Directors attending (In person or by an alternate) with at least one director each from the promoter and the investor.”

22. Article 87(vi) stipulates as follows:

“If permitted by the Act, the Directors may participate in Board meetings by telephone or video conferencing or any other means of contemporaneous communication, provided each person taking part and provided further each director must acknowledge his presence for the purpose of the meeting and any Director not doing so shall be entitled to speak or vote all the meeting. The parties acknowledge, however, that as of the date hereof, the Act does not presently deem such participation to constitute presence "in person" for the purpose of quorum. It is clarified that even in such an event, a quorum shall be constituted in the manner provided in Article 86.”

23. This ‘Tribunal’ is of the view that the ‘Appellant’ has not denied the submission of the Respondent before the NCLT regarding the entries in the passport of Mr. Jason Van Hoong standing testimony to the fact that he had never attended any of these Meetings in India. It is stipulated in Section 283 of the Act that if a Director absents himself from three consecutive Meetings of the Board of the Directors or from all Meetings of the Board for a continuous period of three months, whichever is longer without obtaining leave of absence from the Board, the said Director is ceased to be a Director. The Additional Director, Mr. Surendar Singh, whom the first Respondent contended that was appointed illegally ceases to be an Additional Director after the next Annual General Meeting

(‘AGM’) of the Company. The contention of the Learned Counsel for the Appellant that no proper quorum was present in the instant case is not acceptable, keeping in view the fact that their nominee Director Mr. Jason Van Hoong had never attended the Meetings. Being a majority Shareholder with 75% Equity the Appellant has not given any substantial reasons as to how the second Respondent was left as the sole Director and their response to the letter dated 24.06.2013 addressed to Sh. Manish Parwani CEO of Pramerica India by R-2 and also the letter dated 02.06.2019 addressed to M/s. Victoria Sharpe Singapore raising the issue of collusion of Pramerica and its officials illegally usurping 60% of the Equity Stake in the Nirvana Project. The ‘Appellants’ have not filed any material/documents in support of their contention that being a majority Shareholder they had taken all the steps to be lawfully involved in the Project through their Directors.

24. It is evidenced from the record that a ‘Notice’ of EGM dated 24.06.2013 for the Meeting proposed to be held on 30.07.2013 was sent through RPAD and the Respondent herein has filed the ‘Postal Receipts’ establishing that the ‘Notices’ were indeed sent and served. A Board Meeting was also scheduled to be held on the same date and a ‘Notice’ was also issued for the same, the agenda being increase of Share Capital to Rs.1,10,00,000/- and to pass special Resolution to allot Equity Shares

to the existing Shareholders. In the EGM Resolutions were passed appointing Mr. Suhas Banerjee and Mr. DP Biswas as Directors and the removal of Mr. Surendar Singh and Mr. Jason Van Hoong was ratified. It is significant to mention that neither Mr. Surendar Singh nor Mr. Jason Van Hoong had appeared or raised any protest at that point of time. This Tribunal keeping in view the fact and circumstances of the case on hand and the documentary evidence holds that both the EGM and the Board Meetings held on 30.06.2013 were legal & void. As far as the impugned Mortgage Meetings which the 'Appellant' is contesting, keeping in view the material on record we agree with the finding given by NCLT that though the other Board Meetings held before and after the Impugned Meetings, were admitted by the 'Petitioner'/'Appellant', being a majority Shareholder, has indulged in dereliction of their statutory duties and has indulged in filing multiple proceedings before various fora.

25. Subsequent to these developments, a 'Settlement Agreement' was entered into between the parties vide a 'Share Purchase Agreement' dated 29.09.2016 an MoU of the same date and an 'Escrow Agreement' dated 14.02.2017 of the same date. It is the case of the 'Appellant' that a fraud was committed by the Respondents as the Plots which were meant to finance the purchase of the Appellant's shares, have already been sold by the Respondents. The scope and objective of Sections 397, 398 & 399 of

the Act defining 'Oppression and Mismanagement' does not entail the 'Tribunal' to adjudicate on the issues arising from the facts of the attendant case on hand. Even if there is any breach of the Terms of Settlement, it cannot be construed as an issue which would fall within the ambit of the definition of 'Oppression and Mismanagement' as defined under the 'Act'.

26. For all the aforementioned reasons, these 'Appeals' fail and are accordingly 'dismissed' vide this 'Common Order'. No costs. The connected pending 'Interlocutory Applications', if any, are 'Closed'.

[Justice M. Venugopal]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

14/06/2023
HA / TM