

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH-I**

**C.P (IB) No.295/MB/C-I/2023**

Petition under 241-242 of the Companies Act,2013

Filed by

Deepak Bhagwandas Raheja

**...Petitioners**

Versus

Sea Princess Developers Private Limited and Ors.

**...Respondents**

**Order Pronounced on: 04.06.2024**

***Coram:***

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical) : Mr. Prabhat Kumar

***Appearances:***

For the Petition : Mr. Nausher Kohli a/w Mr. Munaf  
Virjee & Mr. Akash Agarwal i/b  
AMR Law, Advocates

For Respondent No. 2 and 5 : Mr. Shyam Kapadia a/w Mr. Jayesh,  
Advocates

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. The Petitioner has filed the present Company Petition under section 241-242 of the Companies Act, 2013 alleging that acts of oppression are committed by the Respondent No. 2 i.e. Vijay Raheja against the Petitioner Deepak Raheja, who is also his brother, by diluting his shareholding in Respondent No.1 company.

**Submissions advanced by the Petitioner:**

2. At the outset, it is useful to clarify the current shareholding pattern of Respondent No.1 company.

<b>Party</b>	<b>No. of shares</b>	<b>Percentage Shareholding</b>
Deepak (Petitioner)	500	8.33%
Vijay (Respondent No.2)	5400	90%
Gurleen (Respondent No.5)	100	1.67%
<b>Total</b>	<b>6000</b>	<b>100%</b>

3. The Petitioner challenges the aforesaid shareholding pattern and submits that the correct shareholding pattern ought to be as under:

<b>Party</b>	<b>No. of Shares</b>	<b>Percentage Shareholding</b>
Deepak (Petitioner)	500	50%
Vijay (Respondent No.2)	500	50%
<b>Total</b>	<b>1000</b>	<b>100%</b>

4. The Petitioner submits that his shareholding in the Respondent No.1 company has been fraudulently reduced from 50% to 8.33%. In order to ascertain the dispute, it is crucial to have a brief overview of the history of the parties before us. The Petitioner submits that Deepak Raheja (“Petitioner/ Deepak”) and Vijay Raheja (“Respondent No.2/ Vijay”) are brothers, the only sons of Late Bhagwandas Raheja. Mr. Bhagwandas Raheja was a part of the Raheja family, a very prominent and leading real estate family in Mumbai. As such, Deepak and Vijay are both engaged in the business of real estate, and had various business ventures and companies where they were 50-50% shareholders.

5. It is important to note that a charitable hospital named S. L. Raheja Hospital (named after the grandfather of Deepak and Vijay and father of Bhagwandas) was established by the Raheja family. Considering that the hospital was established by the Raheja family as a charitable venture, the various branches of the Raheja family were entitled to appoint trustees to the trust which operates the hospital, viz. the Diabetic Association of India.
6. Accordingly, under an Agreement dated March 8, 2003, Unique Estates Private Limited (representing the G.L. Raheja Group), K. Raheja Corporation Private Limited (representing the Chandru Raheja Group), Manali Investments and Finance Private Limited (representing the Rajan Raheja Group) and B Raheja Builders Pvt. Ltd. (representing the Bhagwandas Raheja Group) agreed to the manner in which trustees of the Diabetic Association of India would be appointed.
7. The said four companies thereafter also entered into an Agreement dated April 25, 2003 in terms of which certain terms governing the SL Raheja Hospital were agreed upon. The rights under the said agreements were assigned by B. Raheja Developers Pvt. Ltd. (then known as Gigaplex Estates Pvt. Ltd.) to Queens Villa Developers Pvt. Ltd. by an Assignment Deed dated August 12, 2015.
8. Queens Villa Developers Pvt. Ltd. was a company in which Deepak and his family and Vijay and his family each had 50-50 shareholding, directly and indirectly. The Respondent No.1 Company was incorporated on August 25, 2017 by Respondent No.2 (Vijay Raheja) and Queens Construction Pvt. Ltd., a company of Vijay's, with them holding 100% of the shares. It is submitted that Vijay informed Deepak that the rights in the Diabetic Association of India could be transferred from Queens Villa Developers Pvt. Ltd. to Respondent No.1 Company, and the

shareholding in Respondent No.1 Company could be held 50-50 by Deepak and Vijay.

9. Since, Respondent No.1 Company was incorporated by Vijay, he was already a director therein, as was Respondent No.3, Vijay's employee. The Petitioner herein was also to be added as a director, apart from holding 50% of the shares. This understanding between Vijay and Deepak was captured in a letter dated December 30, 2017.
10. Agreeing to this, in 2017 Vijay and Queens Construction Private Limited transferred 500 shares in Respondent No.1 Company to Deepak such that Deepak became a 50% shareholder in Respondent No.1 Company. Further, Deepak was appointed as a director of Respondent No.1 Company on December 12, 2017. Further, Queens Villa Developers Pvt. Ltd. entered into an Assignment Deed dated December 26, 2017 with Respondent No.1 Company, assigning all its rights under Agreement dated March 8, 2003 (i.e. in relation to the Diabetic Association of India) to Respondent No.1 Company. It is submitted that 2018 till 2021, barring a transfer of shares between Vijay and Gurleen, Respondent No.1 Company's shareholding pattern and board composition remained unchanged.
11. The Petitioner has alleged the following acts as oppressive:
  - i. 100 shares of Vijay's were transferred to Gurleen in FY 2020-21 as indicated in the shareholding of FY 2021. This was done without approval of the Board of Directors.
  - ii. Respondent No.4 was fraudulently and illegally appointed as an Additional Director of Respondent No.1 Company on August 25, 2021 pursuant to a purported Board Meeting.
  - iii. Mr. Sunil Valani was fraudulently and illegally appointed as an Additional Director of Respondent No.1 Company

on October 8, 2021, pursuant to a purported Board Meeting. Mr. Valani thereafter passed away on December 7, 2022.

- iv. A fraudulent Extraordinary General Meeting of Respondent No. 1 Company was purportedly held on November 29, 2021, at which the Memorandum of Association was fraudulently amended to the effect that the authorized share capital of Respondent No.1 Company was increased from Rs.1,00,000/- divided into 1000 equity share of face value Rs.100/- each to Rs.10,00,000/- divided into 10,000 equity shares of face value Rs. 100/- each.
- v. At a purported meeting of the Board of Directors of Respondent No.1 Company held on February 14, 2022, it was purportedly resolved to allot 5000 equity shares in Respondent No.1 Company to Vijay. The said shares were thereafter fraudulently issued to Vijay, without knowledge of Deepak resulting in Deepak's shareholding in Respondent No.1 Company being severely diluted.

**Submissions advanced by the Respondent No. 2 vide Affidavit in reply**

12. The Respondent No.2 submits that the only asset of the Company are rights to control the appointment of trustees of S.L. Raheja Hospital Private Limited. Since inception, Respondent Nos. 2 and 3 have been directors in the Company. The Petitioner was inducted as a director in the Company on 12 December 2017. The Petitioner was inducted as a director in the Company and became a shareholder of 50% shares in the Company on 22<sup>nd</sup> December 2017. Pertinently, even after being inducted, the Petitioner was only 1 of 3 directors in the Company.

13. It is further submitted that there is absolutely no agreement between the parties, restricting transfer of shares or restricting the shareholding in the Company to the ratio of 50:50 between the Petitioner and Respondent No. 2. There is no restriction on appointment of new directors. No such restrictions are present in the Articles. Accordingly, Respondent No. 2 transferred some of his shareholding to his wife. This was approved by the Board.
14. The Respondent No.2 submits that the Petitioner owed money to Respondent No.2 and until such amounts are repaid back to the Respondent No.2, he would have a majority stake in the Company. Therefore, the Company issued additional shares after prior resolutions by the General Body. This was done with the knowledge and consent of the Petitioner.
15. The Respondent submits that the Respondent No.1 Company was incorporated on 25 August 2017. At the time of its incorporation, he was the holder of 95% of the equity shares of the Company and Queens Construction Private Limited was a 5% holder of equity shares in the Company. The first directors of the Company were Respondent No.2 and Respondent No. 3.
16. The Petitioner became a 50% shareholder of the Company and was inducted onto the Board of Directors of the Company in December 2017. When the Petitioner was inducted there were three directors viz., the Petitioner, this Respondent and Respondent No. 3. Thus, the Petitioner did not have an equal say in the Respondent No. 1's Company's management.
17. Pertinently, the Petitioner and Respondent No.2 are shareholders and directors in various companies. The day-to-day affairs of some companies are managed by Respondent No.2 and those of others are managed by the Petitioner. The Respondent submits that his and Petitioner's offices that are located quite close to each other. The Respondents office is situated at Nandita, Ground

Floor, Linking Road, Santacruz (West), Mumbai 400 054 and the Petitioner sits at Raheja Chambers, 4" Floor, Linking Road. The Respondent submits that as a matter of regular practice therefore, they were not in a habit of giving official notices of meetings. It is stated that during the last few years, even Petitioner has not bothered to officially serve him notices of meetings of the Board of Directors or General Body for Queens Villa Developers Pvt. Ltd, BSR Grihnirmam Pvt. Ltd, SBR Estates & Finance Pvt. Ltd, Sunanda Construction Pvt. Ltd, Kalpitam Investment & Finance Pvt. Ltd and Mont Blanc Hotels Pvt. Ltd.

18. As far as transfer of shares to Respondent No. 5 is concerned, the Respondent No.2 in 2021, as a matter of personal restructuring of holdings, decided to transfer some shares to Respondent No. 5. Accordingly, a meeting of the Board of Directors was held on 25th March 2021 and the transfer of shares was approved.
19. Further, the Respondent No.2 submits that since Petitioner is his brother, he lent him monies from time to time. The Petitioner has also acknowledged a part of the debt by way of his confirmation letter dated 16.5.2019. The Respondent No.2 submits that in 2021, he asked the Petitioner to return these monies. However, the Petitioner was not in a position to do so. Therefore, as a matter of security for the monies due, the Petitioner suggested that Respondent No.2 temporarily take control of the Company by gaining majority control over the shares of the Company. Accordingly, it was agreed that the Company would issue additional shares and allot the same to Respondent No.2.
20. The Respondent No.2 submits that upon the Petitioner returning the monies owed, he is ready and willing to transfer half of the additional shares to the Petitioner. It is stated that it was in the aforesaid context that the General Body of the Company passed the Resolution for increase in authorized Share Capital on 29<sup>th</sup>

November 2021 and the Board of Directors resolved to allot the same to Respondent No.2 in the meeting dated 14<sup>th</sup> February 2022.

21. The Respondent No.2 submits that the Petitioner was notified about the holding of the meetings by him personally. The Petitioner chose not to attend the same. Further, in so far as the appointment of additional director viz. Respondent No. 4 is concerned, it is submitted that appointment is purely for administrative convenience. Respondent No. 4 handles compliances and day to day affairs of various companies that I Respondent No.2 is involved in.
22. The Respondent No.2 submits that the Petitioner was notified and aware of all the impugned actions viz. (i) transfer of 100 shares held by me to Respondent No. 5. (ii) allotment of additional 5000 shares to me and (iii) appointment of Respondent No. 4 as a director of the Company.

**Submissions advanced by the Petitioner vide Affidavit in Rejoinder:**

23. The Petitioner submits that Respondent No.2 has contended that he was only 1 of 3 directors in the Company and that therefore he did not have an equal say in the Company's management. This claim is made on the basis of the contention that Respondent No. 3 (an employee of Vijay) was a director of the Company. It is suggested that even after my induction as 50% shareholder and director, he retained 2 out of 3 directorships on the Board of the Company, thereby retaining control. This is patently false, and misleading.
24. The Petitioner was appointed as a director on December 12, 2017, and also became a 50% shareholder in the Company. The Board of the Company then had 3 directors, Respondent No.2 (Vijay),



Petitioner, and Respondent No. 3. Thereafter, 3 days later on December 15, 2017, Respondent No.3 resigned as a director, leaving only Petitioner and Respondent No.2 (Vijay) as the only 2 directors of the Company. Therefore, from December 15, 2017 onwards Petitioner has an equal say in the Company's management.

25. As regards the contention raised by Respondent No.2 pertaining to the fact that there is no agreement between the parties restricting the transfer of shares or restricting the shareholding in the Company to the ratio of 50:50. The Petitioner submits that this is patently false and relies upon the letter dated December 30, 2017 signed by both Petitioner and Respondent No.2.
26. Further, qua transfer of shares to Respondent No.5 (Gurleen), it the Petitioner submits that no notice of such transfer was given and no approval by the board was sought.
27. The Respondent No.2 has contended that the Petitioner was indebted to him and it was agreed between them that till such monies were paid back, Respondent No.2 would have a majority stake in the Company, as some form of "security". The Petitioner denies the existence of the agreement and further denies consenting to such transfer of shares in Respondent No.2 favor.
28. The Petitioner submits that initially they were in practice of not notifying one another about meetings officially considering the close relationship. However, this ceased to be true considering the disputes that arose between them. The Petitioner submits that he was never notified about any meetings by Respondent No.2 Respondent No.2 has taken decisions unilaterally about Respondent No. I Company by adding directors without calling any board meeting.
29. The Petitioner submits that the Respondent No.2 unilaterally changed the directorship and diluted his shareholding in

Respondent No. 1 Company by significantly increasing his shareholding in the companies which have substantial assets to his benefit.

**Findings:**

30. Heard the learned counsel for both sides and perused the material on record.
31. The primary grievance of the Petitioner is that his shareholding in the Respondent No.1 Company was severely diluted from 50% to 8.33%. The said act of dilution was done by raising the share capital of the Respondent No.1 Company in an Extra Ordinary General Meeting conducted on 29<sup>th</sup> November 2021 and subsequently, in a board meeting held on 14<sup>th</sup> February 2022, and allotting 5000 equity shares to Respondent No.2. It is alleged that the said allotment took place without the knowledge of the Petitioner resulting in the dilution of his shareholding. Per contra, the Respondent has submitted that the service of formal notice was in vogue between the Petitioner and Respondent No.2 in case of group companies part of which were under control and management of the Petitioner. This submission has not been wholly refuted by the Petitioner, however, the Petitioner has submitted that after breaking of the dispute between them the formal notices were served to each other.
32. We find that the Petitioner owed certain monies to the Respondent No.2 and the increase in the share capital of Respondent No.1 company is justified by him as security to ensure repayment of said monies from the Petitioner to Respondent No.2. Respondent No.2 has further offered that the shareholding of the Petitioner can be brought at par with Respondent No.2 shareholding, thus restoring 50% share in the Respondent No.1 Company if the Petitioner pays the amount owed to the Respondent No.2. We find that the amount alleged

to be owed by the Petitioner to Respondent No.2 is evidenced by the confirmation statement as on 16.05.2019. We note that the Petitioner has made out of a case of Respondent No.1 being quasi partnership of the Petitioner and Respondent No.2. Accordingly, we do not find any infirmity in the action of Respondent No.2 if the inter se debt of such partners is securitized by making differential shares in the Respondent Company. Though the act of increasing the share capital without offering additional shares to the Petitioner per se amounts to an oppressive act, we are of considered view that such oppressive act cannot said to be prejudicial to the interest of the Petitioner in the given circumstances. Further, the Respondent Company is stated to own only right to appoint trustees in S.L. Raheja Trust and no other tangible asset. We are of the considered view that it cannot be said to be fit case for winding up of the Company.

33. Nonetheless, we consider it appropriate to reiterate the offer of the Respondent No.2 that the shareholding of the Petitioner shall be equalized to that of Respondent No.2 in Respondent No.1 company upon payment of amount owed by the Petitioner to Respondent No.2. Accordingly, in the interest of equity, we direct the Respondent No.2 to transfer 2500 shares of Respondent No.1 Company to the Petitioner upon receipt of payment towards the amount owed by the Petitioner to the Respondent No.2 as evidence by the confirmation placed on record. It is made clear that the consideration for 2500 shares shall be such as was paid by Respondent No.2 to the Respondent No.1 Company for allotment.
34. As regards, transfer of 100 shares by Respondent No.2 to Respondent No. 5 we do not find the same to be an oppressive act qua the Petitioner as it had not resulted into change in shareholding composition of Petitioner and Respondent No.2

family. Since Respondent No.5 is merely a shareholder and not a director as per the MCA record as on 31.10.2023 placed on record as part of the Petition no order is required to be passed qua her.

35. We note that the letter dated 30<sup>th</sup> December 2017 clearly stipulates that rights of Deepak Raheja and Vijay Raheja are equal in SL Raheja Hospital and they transferred the same to Sea Princess Developers Private Limited (Respondent No.1). There was a clear understanding between the Petitioner and Respondent No.2 that they shall have equal rights insofar as the Respondent No.1 Company is concerned. Accordingly, even if we find force in the contention of Respondent No.2 that fresh allotment was made to securitize the debt owed by the Petitioner to him, the change in such share composition ought not to have resulted into change in the composition of board of directors to the detriment of the Petitioner. Accordingly, we set aside the appointment of Respondent No. 3 and 4 as director of the Respondent No.1 Company.

36. Accordingly, CP No. 295 of 2023 is **partly allowed**.

**Sd/-**

**PRABHAT KUMAR**

**Member (Technical)**

04.06.2024

Priyal

**Sd/-**

**JUSTICE V.G. BISHT**

**Member (Judicial)**