

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, HON'BLE MEMBER (T)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 12.07.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (CA)/166/2023, IA (CA)/81/2024, IA (CA)/106/2024, IA (CA)/153/2024 in Company Petition/36/2023
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	P Venkateshwara Rao & 3 others
NAME OF THE RESPONDENT(S)	K Chandrashekhar & 11 ors
UNDER SECTION	241

**ORDER**

**IA (CA)/166/2023**

Orders pronounced, recorded vide separate sheets. In the result, the application is dismissed.

**IA (CA)/81/2024,**

Orders pronounced, recorded vide separate sheets. In the result, the application is dismissed.

**IA (CA)/106/2024**

Orders pronounced, recorded vide separate sheets. In the result, the application is infructuous.

**IA (CA)/153/2024 in**

Orders pronounced, recorded vide separate sheets. In the result, the application is dismissed.

**Company Petition/36/2023**

Orders pronounced, recorded vide separate sheets. In the result, the Company Petition is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH - II**

**Order for CP No.36 of 2023 and**

**IA No.166/2023, IA No.81/2024, IA No.153/2024 &  
IA No.106/2024**

**filed u/s 241 & 244 of**  
**Companies Act 2013**

**Between:**

1. Mr. P Venkateswara Rao,  
S/o. Mr. P S Madhava Rao,  
H.No.7-1-215/D/1, 2<sup>nd</sup> Floor,  
Flat 201, Yasho Chandra Heaven,  
D K Road, Ameerpet,  
Hyderabad – 500 016.
  
2. Mr. P M K Srinivas,  
S/o. Mr P Venkateswara Rao,  
H.No.7-1-215/D/1, 2<sup>nd</sup> Floor,  
Flat 201, Yasho Chandra Heaven,  
D K Road, Ameerpet,  
Hyderabad – 500 016.
  
3. Ms. P D Madhavi Latha,  
D/o. Mr. P Venkateswara Rao,  
H.No.7-1-215/D/1, 2<sup>nd</sup> Floor,  
Flat 201, Yasho Chandra Heaven,  
D K Road, Ameerpet,  
Hyderabad – 500 016.
  
4. Mrs. P Sujatha,  
W/o. Mr. P Venkateswara Rao,  
S/o. Mr. P S Madhava Rao,  
H.No.7-1-215/D/1, 2<sup>nd</sup> Floor,  
Flat 201, Yasho Chandra Heaven,  
D K Road, Ameerpet,  
Hyderabad – 500 016.

....Petitioners

Vs.

1. Mr. K Chandrashekhar,  
No. A1702, Aparna Sarovar,  
Gachibhowli, Nallagandla,  
Hyderabad – 500 019.

2. Mrs. N. Subhaprada,  
TN-2, Warner Block,  
Golden Metro Apartment,  
Chikalasandra,  
Next to Abbaiah Naidu Studio,  
Banashankari 3<sup>rd</sup> Stage,  
Bengaluru – 560 061.
3. Mr. N. Venkateswara Rao,  
H.No. 6-3-596/22/1,  
Venkataramana Colony,  
Khairatabad,  
Hyderabad – 500 004.
4. Mrs. K. Rajarajeswari,  
No. A1702, Aparna Sarovar,  
Gachibowli, Nallagandla,  
Hyderabad – 500 019.
5. Mr. T.P. Sastry,  
Plot No.18, H.No.2-22-147,  
Subhodaya Colony,  
Kukatpally,  
Hyderabad – 500 072.
6. Mrs. N. Sitaram Lakshmi,  
H.No. 6-3-596/22/1,  
Venkataramana Colony,  
Khairatabad,  
Hyderabad – 500 004.
7. M/s. Allen Reinforced Plastics Pvt Ltd.,  
6-3-856/4, Sadath Manzil Colony,  
Ameerpet,  
Opp. Lane to Green Park,  
Hyderabad – 500 016.
8. Mr. Sanjay Jain,  
4<sup>th</sup> Floor, JK Building,  
A-2 Local Shopping Centre,  
Masjid Moth, South Delhi,  
New Delhi-110 048.

9. Mr. Partho Pratim Kar,  
4<sup>th</sup> Floor, JK Building,  
A-2 Local Shopping Centre,  
Masjid Moth, South Delhi,  
New Delhi-110 048.
10. Mr. Sateesh Chandra Gupta  
4<sup>th</sup> Floor, JK Building,  
A-2 Local Shopping Centre,  
Masjid Moth, South Delhi,  
New Delhi-110 048.
11. Ms. Renu Nanda  
4<sup>th</sup> Floor, JK Building,  
A-2 Local Shopping Centre,  
Masjid Moth, South Delhi,  
New Delhi-110 048.
12. M/s. Jaykay Defence & Aerospace Ltd,  
Rep. by its Authorized Signatory  
4<sup>th</sup> Floor, JK Building, A-2,  
Local Shopping Centre,  
Masjid Moth, South Delhi  
New Delhi – 110 048.

....Respondents

**Date of order : 12.07.2024**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsels present:**

For the Petitioner : Mr. T K Bhaskar, Senior Counsel  
Mr. S Vikas Reddy, PCS

For Respondents 1 to 7 : Mr. S Niranjan Reddy, Senior Counsel  
on behalf of Ms. Rubaina S Khatoon,  
Advocate

For Respondents 8 to12 : Mr. Tarun G Reddy, Advocate

Heard on : 25.06.2024

**Per : Sanjay Puri, Member (Technical)**

**ORDER**

1. The **Petitioners**<sup>1</sup> here are the shareholders in 'Allen Reinforced Plastics Pvt Ltd', **the Company**<sup>2</sup>. They were holding 33.03% along with the **Respondent Shareholders**<sup>3</sup> who were holding 66.97% of shares in the Company, up until 28<sup>th</sup> June 2023, when the events leading up to filing of this application started unfolding.

Table-1  
Shareholding as on 28.06.2023

Shareholders	Existing Shares		
	No.	%	Group %
P-1 <b>P V RAO</b>	1676812	28.23%	<b>33.03%</b>
P-2 P SUJATHA	266123	4.48%	
P3 P M K SRINIVAS	14251	0.24%	
P-4 P D MADHAVILATHA	4749	0.08%	
R-1 <b>K CHANDRASHEKHAR</b>	1841184	31.00%	<b>33.03%</b>
R-4 K RAJESHWARI	120751	2.03%	
R-3 <b>N V RAO</b>	1714561	28.87%	<b>33.94%</b>
R-6 N S LAXMI	228623	3.85%	
R-2 N SUBHAPRADA	18751	0.32%	
R-5 T P SASTRY	54000	0.91%	
Total	<b>5939805</b>	100%	

By the time of filing of this application, JK Defence & Aerospace

<sup>1</sup> Petitioner Nos.1 to 4

<sup>2</sup> Respondent No. 7

<sup>3</sup> Respondent Nos. 1 to 6

Limited (**JK Defence**)<sup>4</sup> had taken over the Company and four **new Directors**<sup>5</sup> were appointed, in addition to the existing promoter Directors Shri K. Chandrashekhar (**KCS**)<sup>6</sup>, Shri N. Vekateswara Rao (**NVR**)<sup>7</sup> and Shri P. Venkateswara Rao (**PVR**)<sup>8</sup>.

2. On 28 June 2023, the Company had made an offer of shares on rights basis to its existing shareholders in the ratio of two shares for every five shares held. The Respondent Shareholders opted to renounce their rights in favor of JK Defence who subscribed<sup>9</sup> to these shares at Rs 141 each. The Petitioners did not subscribe to the right shares by the due date of 09.07.2023 and their unsubscribed<sup>10</sup> portion was also allotted to JK Defence.

Table-2  
Position after Rights Issue

	Group %	Shareholders	Shares			
			No. After Rights	%	Rights	
<b>Petitioners</b>	<b>23.6%</b>	<b>P V Rao</b>	1676812	20.16%	<b>670724</b>	Rights not subscribed
		P SUJATHA	266123	3.20%	<b>106449</b>	
		P M K SRINIVAS	14251	0.17%	<b>5700</b>	
		P D MADHAVILATHA	4749	0.06%	<b>1899</b>	
<b>Respondent Shareholders</b>	<b>23.6%</b>	<b>K CHANDRASHEKHAR</b>	1841184	22.14%	<b>736473</b>	Rights Renounced in favor of JK Defence
		K RAJESHWARI	120751	1.45%	<b>48300</b>	
		<b>N V Rao</b>	1714561	20.62%	<b>685824</b>	
		N S LAXMI	228623	2.75%	<b>91449</b>	
		N SUBHAPRADA	18751	0.23%	<b>7500</b>	
		T P SASTRY	54000	0.65%	<b>21600</b>	
	<b>28.6%</b>	<b>JK DEFENCE<sup>+</sup></b>	<b>2375922</b>	<b>28.57%</b>		
	100%	Total	8315727	100.00%		

<sup>+</sup>one share each allotted to Respondent Nos. 8 and 9

<sup>4</sup> Respondent No.12

<sup>5</sup> Respondent No. 8 to 11

<sup>6</sup> Respondent No. 1

<sup>7</sup> Respondent No. 3

<sup>8</sup> Petitioner No. 1

<sup>9</sup> Page 137 of Preliminary objections filed by Respondent Nos. 1,3 & 7 and Page 284 of Convenience Compilation.

<sup>10</sup>Page 139 of Preliminary objections filed by Respondent Nos. 1,3 & 7 and Page 286 of Convenience Compilation.

3. Subsequent to the Rights Issue, on 09.07.2023, the Respondent Shareholders transferred their existing shares to JK Defence, which increased their (JK Defence's) ownership to 76.41% of the Company, reducing the Petitioners' stake from 33.03% to 23.6%. The Petitioners have cited this reduction as a form of oppression and have also alleged that the actions of the Respondents were prejudicial to the interests of the Company.

Table-3  
 Position after Rights Issue and Transfer of Share

	Group %	Shareholders	Shares			
			No. After Rights & Transfer	%	Rights	
<b>Petitioners</b>	<b>23.6%</b>	<b>P V Rao</b>	1676812	20.16%	<del>670724</del>	Rights not subscribed
		P SUJATHA	266123	3.20%	<del>106449</del>	
		P M K SRINIVAS	14251	0.17%	<del>5700</del>	
		P D MADHAVILATHA	4749	0.06%	<del>1899</del>	
<b>Respondent Shareholders</b>	<b>0%</b>	<b>K CHANDRASHEKHAR</b>	<del>1841184</del>	0%	<del>736473</del>	Rights Renounced & existing shares Transferred to JK Defence
		K RAJESHWARI	<del>120751</del>	0%	<del>48300</del>	
	<b>0%</b>	<b>N V Rao</b>	<del>1714561</del>	0%	<del>685824</del>	
		N S LAXMI	<del>228623</del>	0%	<del>91449</del>	
		N SUBHAPRADA	<del>18751</del>	0%	<del>7500</del>	
		T P SASTRY	<del>54000</del>	0%	<del>21600</del>	
<b>76.4%</b>	<b>JK DEFENCE</b>	<b>6353792</b>	<b>76.4%</b>			
100%	Total	8315727	100.00%			

4. The Petitioners have contested the manner in which JK Defence, a non-member, was brought into the Company and their own shareholding reduced from 33.03% to 23.6%. They have alleged the entire exercise to be premeditated and conducted in a hurried manner to dilute and minimize their shareholding in the Company, amounting to oppression.

### **ISSUES INVOLVED**

5. We have heard the parties and perused the records. Central to the dispute in this case are two Board Meetings of 19.06.2023, and 28.06.2023, an Extraordinary General Meeting (EGM) on 06.07.2023, and a Board meeting of 09.07.2023 and circular resolution passed on that date. The Petitioners allege multiple violations of Company Law regarding the conduct and outcomes of these meetings and resolutions. Details of these meetings and Resolutions are discussed in the following paras.

#### **Engagement of Mr S.S.Marathi, Company Secretary**

6. Prior to holding of this meeting on 19.06.2023, Mr S S Marthi, a Company Secretary was engaged<sup>11</sup> on 05.06.2024 to assist in the process of divesting the promoters' stakes in the Company. The Petitioners have assailed his appointment, arguing that there was no justification for replacing the existing Company Secretary and that the Board was not adequately informed about Mr Marthi's appointment in advance.
7. The Respondent Shareholders have countered by stating that Mr Marthi was engaged as a professional consultant and lack of consent from Petitioner No.1 was of no consequence, as majority of Directors agreed with the decision.
8. We find that the objections of the Petitioners to the engagement of Mr Marthi are unmerited. From the engagement letter of 05.06.2023 itself it is apparent that Mr Marthi was engaged for a specific assignment. He was to extend his professional services in the matters of divestment of stakes of the promoters of the

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<sup>11</sup> Page 105 of the Application



Company. Moreover, in none of the subsequent Board meetings, where Mr Marthi was present, any objection was raised by Petitioner No.1 who attended these meetings as one of the Directors of the Company. Thus, the mere hiring of a Company Secretary under these circumstances cannot be considered as an oppressive act on part of the Respondents.

**Board meeting of 19.06.2023**

9. The Petitioners have raised concerns regarding the Board meeting on 19.06.2023, claiming that the minutes<sup>12</sup> were inaccurately recorded. Moreover, the amended minutes<sup>13</sup> were not made until 30.06.2023. Meanwhile, another Board meeting was convened on 28.06.2023.
10. The Respondent shareholders have stated that the plans for raising capital and introducing a new investor had been under consideration for several years. They have highlighted a valuation report from January 2021, which noted<sup>14</sup> that the Company was planning to raise capital by way of equity by inducting an investor. This report was prepared specifically for the purposes of induction of an investor into the Company. The Board meeting of 19.06.2023 should be viewed in that context, the Respondents argued.
11. The Notice<sup>15</sup> for this meeting was given on 14.06.2023. The Petitioners claimed that it was a very short Notice of less than 5 days and such a Notice violated Section 173(3) of the Companies Act. Although the Notice included a form requesting consent for a short Notice meeting, Petitioner No.1, did not provide consent.

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<sup>12</sup> Page 106 – 108 of the Application

<sup>13</sup> Page 124 – 126 of the Application

<sup>14</sup> Page 74-95 (Para 2 on Page 84) of the Application

<sup>15</sup> Page 102 -104 of the Application

Nonetheless, Petitioner No.1 who was one of the Directors along with Respondents No.1 and No.3, attended the meeting with the other Directors.

12. Minutes of this meeting, which were adopted<sup>16</sup> on 28.06.2023 with 'some minor modifications', show that the issue of disinvestment was indeed discussed during this meeting. Respondent No. 1 and 3 expressed their keenness to divest their stakes in the company due to the reason of their "ageing and ill health". The Petitioner No. 1 however expressed that he would be able to take a decision "after seeking certain clarifications and advice from the experts in this regard".
13. The Board nevertheless decided to continue exploring possibilities of having a potential investors/buyer and obtaining a firm offer along with the terms and conditions. The Board also took note of the concern expressed by the Petitioner No.1 about a CBI case which according to him could impact disinvestment. Regardless, it was "decided to go ahead with the disinvestment".
14. The Board also discussed the possibility of 'Rights Issue of Equity Shares' as mode of raising funds for the Company among other modes such as Private Placement or Preferential Allotment of Equity Shares. No decision however was taken in this regard. Additionally, the Board decided to increase the Authorized Capital of the Company and authorized Respondent No.3 to take necessary steps in that regard.
15. Decision was also taken to amend the Articles of Association (**AoA**) of the Company without hurting the interest of the existing promoters and in consonance with the provisions of the

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<sup>16</sup> Signed on 30.06.2023

Companies Act 2013. Towards the end, the Chairman of the

16. Board (Respondent No.3) informed that an EGM of the Company was to be convened for increase of authorized capital of the company, raising the funds and amendment of the AoA.
17. The Petitioners' sole objection to the meeting held on 19.06.2023 is that it was convened hastily without the required seven days' notice as stipulated under Section 173(3) of the Companies Act. However, given that all company Directors, including Petitioner No. 1, attended the meeting and raised no concerns about the short notice during the proceedings, we find no violation of Section 173(3) of the Companies Act. According to **Ramaiya**<sup>17</sup>

“If majority of the Directors are present or give their consent to holding of a meeting at a shorter Notice, then they should be permitted to hold meetings at shorter Notice.”

Therefore, no oppression or mismanagement resulted from the short notice for calling the Board Meeting held on 19.06.2023.

#### **Board meeting of 28.06.2023**

18. Notice for the meeting on 28.06.2023 was received by the Petitioner No.1 on 25.06.2023. Once again, it was a meeting called at a shorter Notice, but it was attended by all three Directors including Petitioner No.1. No reservation or opposition was expressed with regard to the short notice during the meeting itself.
19. As per the minutes<sup>18</sup> of this meeting, one of the agenda items in

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<sup>17</sup> Ramaiya: Guide to Companies Act: 18<sup>th</sup> Ed: Volume-2: LexisNexis: Page-3020

<sup>18</sup> Page 119 to 123 of the Application

this meeting was to take on record a Valuation Report<sup>19</sup> where the price per equity share of the Company had been valued at Rs 141 per share. This valuation report was discussed and taken on record and it was decided to circulate the full report to all the members of the Board. The Petitioner No.1 expressed that he would be able to give his consent in this regard only after receiving the full valuation report. No explicit disagreement concerning the valuation report being taken on record was conveyed by Petitioner No.1 during the meeting, or even later.

20. The other agenda item about increase of authorized capital of the Company was discussed at length and it was “unanimously agreed for the increase of the authorized capital” of the Company from Rs 6 Crores to Rs 12 Crores. It was also decided to convene EGM of the members in this regard. Resolution for amending the Memorandum of Association (MoA) of the Company to this effect was also passed.
21. During the meeting, two out of three Directors expressed a view that at least Rs 30 Crores is required to be infused immediately in the Company to meet the working capital and capital expenditure requirements. The third Director i.e. Petitioner No.1 “was not totally in agreement with the same”.
22. The Board then discussed “in detail” the question of infusing of funds into the Company by going through the Rights Issue mode, “which enables the existing shareholders also to infuse funds into the company”. During the discussions Petitioner No.1 emphasized that “all the existing shareholders should be given opportunity to subscribe to the rights issue

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<sup>19</sup> Page 221 of Common Rejoinder filed by the Petitioners (Valuation Report) and Page 201–215 of Convenience Compilation.

as per prescribed procedure in the Companies Act and AoA”.

23. Rights Issue size was then arrived at 23,75,922 shares @ Rs 141 per share amounting to Rs 33.50 Crores to be offered in the ratio of two new shares for every five existing shares held, which was “accepted”. Petitioner No.1 made a suggestion, that the opinion of legal experts may be taken in this regard, which was also accepted by the other members of the Board.
24. The Minutes of this Meeting reveal that, while Petitioner No.1 might not have been ‘totally in agreement’ with the position that the Company required infusion of funds, he however went along with the proposal of Rights Issue of shares to the existing shareholders. He was also part of the unanimous decision to raise the authorized capital of the company from Rs 6 crores to Rs 12 crores. On the issue of valuation report being taken on record, Petitioner No.1 withheld his assent pending receipt of the full report. None of the decisions taken in the Board Meeting of 28.06.2023 appear to be oppressive towards the Petitioners or indicative of mismanagement of the Company affairs.

**EGM of 06.07.2023**

25. Notice for this meeting was issued on 28.06.2023 i.e. same day when it was resolved in the Board Meeting to increase authorized share capital from Rs 6 Crores to Rs 12 Crores and corresponding changes to MoA of the Company.
26. According to the minutes of this meeting<sup>20</sup>, all shareholders attended (either in person or by proxy). It was resolved, by way of an ordinary resolution, to increase the share capital from Rs 6

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<sup>20</sup> Page 188-192 of Common Rejoinder filed by the Petitioners and Page 253–259 of Convenience Compilation.

Crores to Rs 12 Crores and to alter the Company's MoA accordingly. The Petitioners, representing 33.03% of the shareholding, voted against the resolution, while the majority Respondent shareholders, representing 66.97%, voted in favor.

27. During the EGM held on 06.07.2023, Petitioner No.1 expressed "no objection" to increasing the Authorized Capital. However, he insisted that this should be done through a special resolution, rather than the ordinary resolution proposed in the Notice for the EGM. The Petitioners have claimed that the decision to increase the authorized capital through an ordinary resolution was against the provisions of company law and the rules/regulations made thereunder.
28. The Respondents have claimed that since the AoA of the Company already provided for the power to alter share capital, special resolution was not required, and the capital clause of the MoA was altered in due compliance with the provisions of the company law.
29. The contention of Petitioner No.1 about the requirement of the special resolution (needing approval by at least 75% of shareholders) as against the ordinary resolution (needing only simple majority of more than 50% of shareholding), is to be seen by referring to Para 1 of Article-IV, of the Articles of Association (**AoA**) of the Company, which declared that:

**"The authorized share capital or the company shall be as stated in Clause V of the Memorandum of Association of the Company."**

and Article V of the Memorandum of Association (**MoA**), specified that:

**“The share capital of the Company is Rs.6,00,00,000.00 (Rupees Six Crores), divided into 60,00,000 (Sixty Lakhs) Equity Shares of Rs.10/- (Rupees Ten) each.”**

The Articles of Association (**AoA**) in Para 1.3 of Article-V then stipulated that:

**“The Company in general meeting may alter the conditions of its memorandum pursuant to Section 94 of the said Act<sup>21</sup>.”**

A combined reading of the AoA and MoA, along with the provisions<sup>22</sup> of Section 13 and Section 61 of the Companies Act 2013, indicates that the authorized capital of the Company could have been increased by a general resolution and did not require a special resolution. While Section 13 mandates that any alteration to the MoA must be done by a special resolution, Section 61 provides an exception that allows such alterations through a general resolution if authorized by the company's AoA. Since the AoA of the Company specifically allowed alterations to the conditions of its memorandum in a general meeting, there was no infirmity in doing so through a general resolution under Section 61.

30. The conduct of this EGM and the resolutions passed therein do indicate a disagreement between shareholders regarding the method of passing the resolution to increase authorized capital.

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<sup>21</sup> Section 94 of the Companies Act, 1956 under which the Company was incorporated is Para-Materia to Section 61 of the Companies Act 2013

<sup>22</sup> **Section 13. Alteration of memorandum—**

(1) *Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.*

**Section 61. Power of limited company to alter its share capital—**

(1) *A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its **general meeting** to—*

*(a) increase its authorised share capital by such amount as it thinks expedient; (emphasis supplied)*

However, they do not suggest any oppression of the Petitioners or a conduct prejudicial to the interests of the Company. Furthermore, there was no contravention of the provisions of the Companies Act, 2013, as alleged by the Petitioners.

**Circular Resolution of 09.07.2023**

31. On 06.07.2023, the day of passing of the resolution to increase authorized capital, another Notice of a Board Meeting to be held on 09.07.2023 was sent with the following agenda:

- To elect the Chairman of the meeting.
- To grant Leave of Absence.
- To confirm the minutes of the previous Board Meeting held on 28<sup>th</sup> June 2023.
- To allot shares to the subscribers under the rights issue.
- To approve the share transfers received by the company.
- Any other matter with the permission of Chair.

32. On 09.07.2023 however, things moved swiftly. Draft resolutions were circulated for appointment of Respondents Nos. 8 to 11 as new additional Directors. These resolutions were approved by Respondent No.1 & 3, representing majority in the Board of Directors. Petitioner No.1, being in minority, recorded his dissent to the proposal of having Additional Directors in the Company and abstained from attending this meeting.

33. It is on the same date that the Respondent shareholders renounced their rights to subscribe to the Company shares in favor of JK Defence, who in turn applied and was allotted 15,91,145 shares for which the rights were renounced. Also, allotted to JK Defence were 7,84,775 shares, the unsubscribed portion of the rights given to the Petitioners.



34. This date also saw transfer of all the shares 39,77,870 held by Respondent Nos. 1 to 6 to JK Defence. These renunciations, subscription and transfer of shares in favor of JK Defence resulted in JK Defence holding 76.4% of shareholding as against 23.6% by the Petitioners.
35. All the aforementioned decisions—namely, the allotment of shares against the renounced/unsubscribed Rights Issue, the transfer of shares to a new investor, JK Defence, and the induction of Additional Directors on its behalf—were made by Respondent Nos. 1 and 3. These Respondents, in addition to being the majority on the Company's Board, were also the majority shareholders before the new investor JK Defence acquired shares in the Company.
36. In respect of these developments, Petitioner No. 1 registered his protest by sending an email<sup>23</sup> on the same date to Respondent Nos. 1 and 3, among others. Shortly thereafter, on 11.07.2023, the present application was filed.

**Disagreement, whether Oppressive?**

37. It is uncontested that the Respondent shareholders were desirous of divesting their stakes in the Company for a right price, and they had been making efforts in that direction. The Petitioners were however not inclined to leave the Company at the price offered by JK Defence.
38. The disagreement between the Petitioners and the Respondent Shareholders regarding raising finances for the Company or bringing in a new investor is evident. However, regardless of their differences, the power to make decisions on these matters rested

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<sup>23</sup> Page 133 of Application

with the Company's Board, as per the Articles of Association (AoA) of the Company. A decision by majority which is not acceptable to the minority, by itself, cannot be an oppressive decision to the minority. The Board's majority decision should prevail unless there is clear evidence of impropriety in the decision-making.

39. It would be useful here to refer to the decision in the case of **Shanti Prasad Jain**<sup>24</sup> where while explaining oppressive conduct, Hon'ble Supreme Court held that:

**"The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder."**

In this case, the decision-making process regarding the Rights Issue, renunciation by Respondent shareholders, allotment of unsubscribed rights shares, and transfer of shares to JK Defence was clearly premeditated. These actions were all executed on 09.07.2023, a day when the Petitioners were not represented on the Board, indicating a sense of urgency and strategic planning by the Respondents. Nevertheless, the Petitioners also had a fair opportunity to subscribe to the Rights Issue and thereby maintain their stakes. The Petitioners' lack of prompt action does not warrant a conclusion of lack of probity or unfair play on the part of the Respondents.

40. The strategic planning by JK Defence, in collaboration with the

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<sup>24</sup> Shanti Prasad Jain v. Kalinga Tubes Ltd., 1965 SCC OnLine SC 15

Respondent shareholders, to acquire the majority stakes in the Company also cannot be considered wrongful. The records indicate that all existing shareholders, including the Petitioners, were considering bringing in an investor to raise finances for the Company. While there were disagreements between Petitioner No.1 and the other two Directors (Respondent No.1 & 3) regarding the mode of investment, company valuation, and the choice of investor, these decisions were ultimately made by majority vote in the Board.

41. So far as the renouncement of Rights and subsequent transfers of existing shares by the Respondent shareholders in favor of JK Defence is concerned, it was an exit action on their part and can scarcely be termed as oppressive to the Petitioners. The role of JK Defence in the entire matter was that of an outsider investor who brought in capital in the Company, before buying out stakes of the Respondent shareholders. This too was in no way detrimental or oppressive to the Petitioners.

### **RESPONDENTS' ACTIONS, WHETHER LAWFUL**

42. As allegations have been made about the Respondents' actions not in accordance with the provisions of the Companies Act, the specific questions that arise based on the facts of this case are about:

#### **The Rights Issue**

43. As noted earlier, it was in the Board meeting of 28.06.2023, the need for raising funds required for the company was discussed. It was in this context the option of raising funds through a Rights Issue was also deliberated and accepted. The Rights Issue, was

then made to all existing shareholders including the Petitioners, on the same day in the ratio of 2 shares for every 5 shares held. Last date for making the subscription was 09.07.2023, giving twelve (12) days to the existing shareholders for doing the same.

44. The Statutory requirement under Section 62(1)(a)(i) is that whenever a Company proposes to increase its subscribed capital by issue of further shares, these shares are to be offered to the existing shareholders in proportion to the paid-up capital on those shares by sending a letter of offer by a Notice specifying the no. of shares offered and time limiting not less than 7 days<sup>25</sup>.
45. In this case, the existing shareholders, including the Petitioners, were provided a 12-day period to subscribe to the Rights offer. On the final day of this period, i.e. on 09.07.2023, the Petitioners had not subscribed to their allotment of 784,775 shares. Consequently, these shares were deemed unsubscribed and were therefore allotted to JK Defence, as per the AoA.
46. While the Rights Issue was conducted lawfully, the question remains whether the unsubscribed portion of 784,775 shares could have been allotted to JK Defence. This issue is explored in the succeeding paras along with the question of renunciation in favor of JK Defence by the Respondent Shareholders

### **The allotment of unsubscribed and renounced shares**

47. As held previously, the Rights Issue was conducted lawfully and provided existing shareholders sufficient time to subscribe (or renunciate) to their proportional share stakes in the company. We now turn our attention to examining the validity of the Respondent

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<sup>25</sup> Rule 12A of (Companies Share Capital & Debentures) Rules, 2014, as amended w.e.f. 01.04.2021

shareholders' renunciation of their rights and the subsequent allotment of these shares, as well as any additional shares from the unsubscribed portion, to the new investor JK Defence.

48. As previously noted, Section 62 of the Companies Act stipulates that any issuance of new shares by the Company must be offered to existing shareholders in proportion to their shareholdings at the time of the offer. This offer, **unless the Articles of the Company otherwise provide**, deemed to include Right to renounce shares offered to the shareholder in favor of any other person. It was argued on behalf of the Respondents that under sub-clause (ii) of Section 62 (1)(a), existing shareholders have the right to renounce their subscription to the shares in favor of anyone, including the non-members.
49. Challenging this interpretation, the Petitioners argued that for Private Companies, sub-clause (ii) is not applicable to any person other than the existing members. It was argued that permitting renunciation in favor of non-members could transform the Private Company into a Public Company, contradicting the Articles of Association which expressly prohibit public subscriptions to shares. To support this argument, a decision of the Hon'ble Supreme Court in the case of ***Needle Industries***<sup>26</sup> was referred.
50. The ratio of *Needle Industries* in the context of Section 62(1)(a)(ii) however is to be seen in proper perspective. While interpreting Clause (c) of Section 81(1) of the Companies Act 1956, which is para-materia with Section 62(1)(a)(ii), the Hon'ble Supreme Court began by stating that "***apart from the consideration arising out***

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<sup>26</sup> Needle Industries (India) Ltd & Ors vs Needle Industries Newey (India) Holding Ltd & Ors (1981) 3 SCC 333

**of the opening words of that clause**” and then went on to interpret the rest of the provision. Now, the opening words of Clause (ii) are “**unless the Articles of the Company otherwise provide**” – suggesting thereby that if the Articles of the Company provide for induction of a non-member into the Company, the ratio of *Needle Industries* would not come in the way.

51. In the present case, AoA of the Company provide in Para 4.5 of Article V<sup>27</sup>.

“ 4.5 Save as hereby otherwise provided, no share shall be transferred to any person who is not a member of the Company **so long as any member or any person selected by the Directors as one to whom it is desirable in the interest of the Company to admit to membership** is willing to purchase the same at the fair Value, which shall be determined as hereinafter provided.”

This part of Articles of Association (AoA) of the Company clearly stipulates that in the interest of the Company, a non-member can be admitted as a shareholder if he is willing to purchase the shares at a fair value.

52. The AoA of the Company therefore allows for an exception to the general interpretation established in the *Needle Industries* case, which deemed the renunciation of rights to subscribe to shares in favor of non-members as generally inconsistent with the intent that non-members should not become part of a Private Company under Section 62(1)(a). The AoA permitted induction of non-members, in the interest of the Company, with the approval of the

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<sup>27</sup> Page 54 of the Application

Board of Directors. Since two of the three Directors endorsed this induction, the renunciation of subscription rights in favor of non-members in this case was not unlawful.

53. The allotment of the unsubscribed portion to JK Defence does not suggest an intention to dilute the Petitioners' stake, as they (the Petitioners) were given a fair opportunity to subscribe to the Rights issue. The purpose instead was to bring in the necessary capital into the company, which the Respondent Shareholders were unwilling to provide and the Petitioners chose not to contribute. So far as the interest of the Company was concerned, it was up to the Board of Directors to decide, and they decided (by majority) to allot the renounced and unsubscribed portions of the Rights issue to JK Defence. No infraction of the law or the AoA can be ascribed here.

**Transfer of shares to a non-member**

54. In the preceding paras, it has been held that under Section 62(1)(a)(i) read with the Articles of Association (AoA) of the Company, the renounced and unsubscribed portion of the rights to subscribe to shares could be allotted to a non-member, in the interest of company as decided by its Directors.
55. After the Respondent shareholders renounced their rights and the unsubscribed portion originally allocated to the Petitioners was allotted, JK Defence subscribed to these shares. This subscription granted JK Defence membership status within the Company. Under para 4.3 of the AoA, “**Any shares may be transferred by a member to another member....**”. Consequently, the subsequent transfer of shares from the Respondent shareholders to JK Defence was also

as per law.

### **Appointment of Additional Directors**

56. The Articles of Association (AoA) clearly provide as follows:

#### DIRECTORS

4.33 The number of Directors shall neither be less than two nor more than twelve including Special, Technical Additional, alternate, Nominated and Debenture Directors if any.

4.34 The Promoter Directors of the Company are:

K. CHANDRASEKHAR

P. VENKATESWARA RAO

N. VENKATESWARA RAO

4.35 The Board shall have power, at any time, and from time to time to appoint any person as a Director in addition to the Board but so that the total number of Directors shall not at any time exceed the maximum number fixed by these Articles. Any Director so appointed shall hold office only until the next Annual General Meeting of the Company and shall then be eligible for re-election.

It is evident that the Board of the Company as represented by its directors could have appointed 'any person' as Additional Director. Before transfer of their respective shares to JK Defence, and before resigning from the Board, Respondent No. 1 & 3 being in majority had power to appoint new Additional Directors to the Board. No legal infirmity is seen in these appointments.

### **Position of the Petitioners, whether compromised**

57. The 'Project Rising Sun' document<sup>28</sup> and related deliberations demonstrate the coordinated efforts and behind-the-scenes

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<sup>28</sup> Pg 106 & 107 of the common rejoinder of the Petitioners (Meeting dated 06.07.2023).



discussions between Respondent Nos. 1 & 3 and Respondent No. 12 and their representatives. It is evident that the Petitioners were caught off guard by the premeditated actions of the Respondents on 09.07.2023.

58. Be that as it may, the Petitioners were allowed sufficient time as per law, and they could have subscribed to the shares offered in the Rights Issue and their stake in the Company would have remained intact. Thereafter, even if an outsider was brought into the company by a majority decision of the Board of Directors, their interest in the company would have remained as before. The Company did offer the Petitioners the right to subscribe to the Company's shares. The Petitioners inability to avail themselves of this opportunity cannot be attributed to the Respondents and be seen as oppressive.

### **Valuation of the Company's shares**

59. A contention has been raised about the valuation of the Company and fair value of the shares allotted to JK Defence. It has been claimed on behalf of the Petitioners that the share of the Company was valued at much more than Rs 141 for which it was allotted to JK Defence. Different valuation reports<sup>29</sup> have been cited in this regard to claim higher fair value of the Company's shares.
60. This Authority has neither wherewithal nor jurisdiction to determine the fair value of any company. We do however acknowledge that the fair-value<sup>30</sup> of any asset means its estimated

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<sup>29</sup> Report on Share Valuation dated 20.01.2021 on Page 74-95 of the Application. AND IDBI Valuation report dated 01.03.2024 at Page 513-534 of the Rejoinder to the Counter reply of R-1,3 & 7

<sup>30</sup> "**fair value**" means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and

realizable value as agreed upon between a willing buyer and a willing seller in an arm's length transaction, where both parties have acted knowledgeably, prudently, and without compulsion. In other words, the fair value of any property, including shares in a company, is determined by the transacting parties acting at arm's length in an open market.

61. The valuations of shares presented in various reports are merely estimates, while the actual price of the Company's shares is the amount agreed upon by the transacting parties. In this case, there is no evidence to suggest that the transferors (the Respondent shareholders) and the transferee (JK Defence) were not acting at arm's length or were motivated by any extraneous considerations. The argument that the Company's shares were issued or transferred at a price below their fair value holds no merit.

**CBI case against Respondent Nos 1, 3 & 5**

62. The Petitioners repeatedly have referred to an ongoing CBI case against Respondent Nos 1, 3 & 5 and had even raised concerns about the same during the Board meeting of 19.06.2023. However, it has not been explained as to how this case could be a basis for alleging oppression of the Petitioners.

**Lawful acts leading to oppression**

63. This brings us to the last argument raised on behalf of the Petitioners that even the lawful Acts can be oppressive in nature, and should be brought within the purview of section 241 of the

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*without compulsion*, [Regulation 2(1)(hb) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

Companies Act. Case of **Seth Mohanlal Ganapatram**<sup>31</sup> was cited in this regard.

64. In that judgement, in the context of Section 397/398 of the Companies Act 1956, the Hon'ble Judge P N Bhagavati J held that:

“It may be that a resolution may be passed by the Directors which is perfectly legal in the sense that it does not contravene any provision of law, and yet it may be oppressive to the minority shareholders or prejudicial to the interests of the Company.”

In that case, the Hon'ble Judge had first reached a conclusion that the alleged action “**was not oppressive to the minority shareholders or is prejudicial to the interests of the Company**” and then declared that “**all further inquiry in regard ... must cease**”. It was after deciding on the issue of oppression of the minority shareholder, the Hon'ble Judge had proceeded to hold that the legality of the action taken by the Directors is of no consequence in determining the same.

65. Our observations in the preceding paras are in conformity with the proposition laid down by the Hon'ble Judge in *Mohanlal Ganapatram* case. Here too, none of the actions, starting from the engagement of Shri S S Marthi (to assist in disinvestment of the stakes in the Company by the existing shareholders), to the Board Meetings of 19.06.2023 & 28.06.2023 and EGM of 06.07.2023, have been found to be oppressive to the Petitioners, or prejudicial to the interest of the Company. That these were lawful actions has also been established.

66. Regarding the events of 09.07.2023, the Petitioners themselves were responsible for their predicament. They had a fair chance to subscribe to the Rights shares and maintain their stakes in the

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<sup>31</sup> Mohanlal Ganapatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd., 1964 SCC OnLine Guj 66

Company. Their failure to do so cannot be considered oppression by the Respondent shareholders or the Company, particularly when none of the Respondents' actions have been unlawful.

67. Taking over of the majority (76.4%) stakes in the Company by the new investor JK Defence, after subscribing to the Rights Issue and subsequently buying out the existing members of their stakes, as seen earlier, was also neither oppressive nor prejudicial to the interest of the Company. Their subsequent conduct is a matter of another Interlocutory Application, which is being decided separately.

**In view of the foregoing, we find no merit in the petition and the same is dismissed.**

68. During the pendency of this Company Petition No.36 of 2023, several IAs were filed by the Petitioners, and one IA was filed by the Respondents. In the light of the findings in the main Petition, these IAs are dealt with in the following manner:

**IA/166/2023**

- (1) This IA was filed by the Petitioners for seeking interim reliefs of
- (a) Staying the operation EGM of 06.07.2023
  - (b) Staying of the Board's resolutions passed in the meetings of 19.06.2023, 28.06.2023 and 09.07.2023
  - (c) Directing the Respondents to cooperate with the Applicant in running of the Company i.e. Respondent No. 7 in CP No. 36/2023

(d) Restraining the Respondent Nos 8 to 11 in CP No. 36/2023 from acting as Additional Directors of the Company

(e) Staying the effect of transfer of shares by the Respondent Nos 1 to 6 in favour of Respondent No. 12 in CP No. 36/2023

(2) In view of the orders passed in CP No. 36/2023, the prayers in (a), (b), (d) and (e) have been rendered infructuous, and dismissed accordingly.

(3) The Prayer in (c) can be permitted to the extent of the Applicant's current role in the Company.

The IA is disposed of as dismissed, with the observation as in (2) above.

#### **IA/81/2024**

This IA, filed by the Petitioners seeking restrain on the conduct of the EGM on 29.03.2024, prevent the increase in authorized share capital pursuant to the resolution passed on 06.03.2024, and maintain the status quo regarding share capital and promoter directors in the MoA and AoA of the Company, has been rendered infructuous due to subsequent events and is therefore dismissed.

#### **IA/153/2024**

- (1) This IA was filed against the removal of Petitioner No. 1 as Director of the Company.
- (2) Subsequent to JK Defence (R-12 in CP/36/2023) taking control of majority shareholding of the Company, after subscribing to the unsubscribed/renounced Rights Issue shares and bought shares from the Respondent shareholders (Respondent Nos. 1 to 6 in

CP/36/2023) on 09.10.2023, the Company, though a private company became a deemed public company for the reason of it being a subsidiary of Jaykay Enterprises Ltd (a public limited and a listed company), and its directors subject to the provisions of section 152(6) of the Companies Act.

- (3) Being the longest serving director in the Company, Petitioner No.1 was eligible for retirement, and a resolution was passed to this effect in the newly constituted Board meeting of 30.04.2024, by stating that:

“pursuant to the provisions of Section 152 and other applicable provisions, if any of the Companies Act 2013 and Rules made thereunder, the Board of Directors of the Company be and is hereby recommended to the shareholders for their approval, the re-appointment of Mr. Venkateswara Rao Poruri (DIN:00035426), Director, who is liable to retire by rotation at the ensuing Annual General Meeting and being eligible, has offered himself for re-appointment.”

Summary of decisions: The Chairman informed that the Board Members recommended the proposal for retirement by rotation of Mr. Venkateswara Rao Poruri and re-appointment at the ensuing AGM of the Company subject to shareholders approval”

In the subsequent AGM held on 22.05.2024, one of the agenda item was:

“To appointment of Mr. Venkateswara Rao Poruri (DIN: 00035426), who retires by rotation in accordance with the provisions of Section 152 of the Companies Act, 2013.

To consider and if thought fit, to pass with or without modification(s), the following resolution as an Ordinary Resolution (with or without modification).

Resolved that pursuant to Section 152 and other applicable provisions if any of the Companies Act 2013 read with relevant rules made thereunder (including any statutory modification or re-enactment thereof, for the time being in force), Mr. Venkateswara Rao Poruri (DIN:00035426), who retires by rotation, be re-appointed as a Director of the Company.”

This resolution reportedly was defeated and Petitioner No.1 was not reappointed.

- (4) Here it will be useful to refer to the Apex Court’s judgement in **LIC vs Escorts Ltd**<sup>32</sup>, where it was held that corporate democracy requires that there must not be any interference on the rights of shareholders to move resolutions for the General Meeting, and the same cannot be interfered with or restrained by courts or tribunal. As succinctly put by the Hon’ble Supreme Court,

**“...the only effective way the members in general meeting can exercise their control over the directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the directorate and appoint others in their place. The holders of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a Director and appoint another.”**

- (5) In light of this principle, the decision of the majority shareholders of the Company to not renew the directorship of Petitioner No.1 should be respected. Interference with their decision would undermine the essence of corporate democracy and the autonomy

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<sup>32</sup> LIC v. Escorts Ltd., (1986) 1 SCC 264

of shareholders. Therefore, we are not inclined to interfere with the majority shareholders' decision.

- (6) Another contention raised in the Interlocutory Application (IA) regarding the Company's decision to pursue a Rights issue of shares is also unmerited. The Rights issue process allowed existing shareholders to purchase additional shares in proportion to their current holdings. In this case, the Petitioners were given the opportunity to subscribe to the Rights issue in the same proportion as their shareholding. This was to ensure that their ownership percentage in the Company remains unaffected if they choose to participate. Therefore, the Company's decision to go for a Rights issue is considered fair and does not warrant any interference.

This IA No. 153/2024 is also dismissed.

**IA No. 106/2024**

This IA filed by the Respondent No.12 against the Petitioners in the main CP No.36 of 2023, seeking certain reliefs during the pendency of the main CP. Since Company Petition No.36 of 2023 is being disposed of through the present Order, this IA No.106 of 2024 does not survive and is also disposed of accordingly.

**Sd/-**

**(SANJAY PURI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)**

VL