

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

C.P. 743 OF 2017

Under Section 241-242 of Companies Act,
2013

Mr. Balwant Singh Kanda,

...Petitioner

Vs.

Kanda Auto Private Limited & others

...Respondents

Order delivered on: 10.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)
Appearances

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

For the Petitioner(s) : Mr. Rohit Gupta, Advocate
a/w Ms. Prashansa Agrawal,
Advocate, Mr. Agam Maloo, Mr.
Prakhar Tandon, Advocates, Mr.
Amol Purandare, CS i/b Mr. Adity
Dubey

For the Respondent(s) : Mr. Satyavikram a/w Ms. Lekha
G.V., Advocate,

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Petition 743/2027 is filed by Mr. Balwant Singh Kanda, (Petitioners) on 04.12.2017 under Section 241 & 242 of the Companies Act, 2013 against Kanda Auto Private Limited & 2 others (Respondents) seeking following reliefs
 - a. To issue appropriate orders, directions and reliefs under Section 242 of the Companies Act 2013 to bring an end to the prejudicial, unfair and oppressive act perpetrated by the Respondent Nos.2 & 3, including the necessary orders, directions and reliefs as prayed for herein;
 - b. To direct the Respondent Nos.2 & 3 to comply with the settlement resolution dated 21st September 2010 (passed in the Board meeting of the Company held on 21st September 2010) and fulfill the terms therein thus giving effect to the said settlement resolution;
 - c. To pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
2. The Respondent No.1, Kanda Auto Private Limited which was formerly Kanda Pressings Private Limited was incorporated on 29th January 1996 under the provisions of the Companies Act, 1956. The Company is limited by shares. The Authorised and Paid up share capital of the Company is Rs.2,00,00,000/- comprising of 20,00,000 equity shares of Rs.10/-each. The registered office of the Company is at the address mentioned in the cause title. at the

- 2.1. The Company is engaged inter alia in the business of automobile components, spare parts and engineering fabrication. The main objects for which the Company was incorporated are set forth and can be seen from its Memorandum of Association.
- 2.2. In or around the year 1977, the Petitioner and the Respondent No.2 started a business under the name Steelex Enterprises, which was a partnership firm with both brothers as equal partners. The firm was engaged in manufacturing components for M/s Raja Bahadur mills. Mostly, the financial transactions were handled by the Respondent No.2 and manufacturing related activities were handled by the Petitioner. At the time, as the business had just commenced and not much funds were available with the concern, family members and relatives provided financial assistance by way of loans to the firm.
- 2.3. In or around the year 1981, another firm in the name of Kanda Agriculture and Engineering Co. was established with both Petitioner and Respondent No.2 as equal partners. A shed was constructed on the aforesaid Mundhwa land. The above firm was engaged in manufacturing auto components and was a vendor for M/s Tata Motors Ltd.
- 2.4. On 29th January 1996, the Respondent No.1 Company came to be formed and Incorporated with the Petitioner and the Respondent Nos. 2 & 3 as equal shareholders in the Company. All the above stated businesses, partnerships and proprietorships were merged into the Company.
- 2.5. The business of the Company continued to expand. In or around the year 2001, the Company ventured into motorcycle

business in collaboration with a Chinese company. It was primarily the Respondent No.2's proposal to undertake the motorcycle business. All the available resources and funds were spent into the development of the motorcycle business. The Petitioner was strongly opposed to this proposal due to lack of in-house expertise and funds to finance the project and voiced his concerns with the board. The Respondents however dismissed his concerns by claiming huge growth potential of the said project.

- 2.6. With all the Company funds being diverted to the above motorcycle project, there was a funds crunch which impacted the business of the Company. The land at Mundhwa came to be sold. Some of the sale proceeds of the above sale were diverted to the individual accounts of the Respondent No.2's family members. Further, the shed constructed on the Mundhwa land was shifted to the plot in Village Bhare and the same was let out to another concern named Perfect Coating and the rent was collected by the Respondent No.2
- 2.7. On the contrary, the entire savings of the Petitioner were transferred to the Company to support the development of the motorcycle business and for purchasing additional land measuring about 10000 sq.ft. at Bhare and also land measuring about 16.5 acres at Mugavde.
- 2.8. On 12th February 2007, vide a special resolution passed at the Extraordinary General Meeting of the Company, the authorised share capital of the Company was Increased from Rs.25 lakhs to Rs.2 crores. The Petitioner's shareholding in the Company was reduced to 25.05% whereas the combined shareholding of the Respondent Nos.2 & 3 was Increased to 74.95%. The Petitioner was not at all aware of the aforesaid

dilution until September 2010, when the division of the Company's assets took place and separation/settlement proposed by the Respondent No.2 happened (more particularly set out hereinbelow). It is pertinent to note that the Petitioner was not even aware of the increase in share capital from Rs. 1 lakh at the time of incorporation to Rs.25 lakhs as on January 2007. On both the occasions, no proper notice was given to the Petitioner in accordance with the provisions of the Companies Act.

- 2.9. The motorcycle business did not do well and could not achieve the success as projected. Nevertheless, the Company continued to invest in the motorcycle project at the Instance of the Respondent No.2 and funds continued to be diverted to the said project despite the Petitioner's opposition.
- 2.10. Much to the Petitioner's shock and surprise, the Respondent No.2 started making baseless and false allegations against the Petitioner of mismanaging the Company's resources and causing loss to the Company. Disputes started brewing between the brothers amidst the failure of the motorcycle project and mounting recurring expenses for the same which further worsened and resulted in breakdown of their relations bringing a deadlock in the Company. Consequently, business of the Company was affected.
- 2.11. In March 2010, the Respondent No.2 proposed separation of the Petitioner from the Company and that the brothers part ways. He started interfering in the daily working of the Petitioner. Further, he pressured the Petitioner to resign from the board of the Company. In the circumstances, elder members of the family attempted mediation and consequently a settlement was arrived at between the brothers. The aforesaid

settlement came to be recorded vide a resolution passed in a meeting of the Board of Directors held on 21st September 2010. Essentially, the settlement was about division and sharing of various properties of the Company and further it was decided that all assets and liabilities of the Company as on 30th September 2010 shall be shared by the Petitioner and Respondent No.2 equally. The settlement was to come into force w.e.f. 1st October 2010 and was binding on the Petitioner and Respondent No.2.

2.12. During the mediation talks for arriving at the above settlement, it was agreed between the parties that the Petitioner would resign as a Director of the Company. As such, the Petitioner's resignation was a precondition to the settlement. Accordingly, the Petitioner tendered his resignation letter however; the Respondent No.2 did not take any steps as per the agreed settlement. On the contrary, on being requested to comply with the settlement resolution, the Respondent No.2 blatantly stated that the said resolution did not hold any value and he was not obliged to meet any of the conditions therein.

2.13. As per one of the terms of the settlement, the Company's business with Asia Motor Works (AMW), Tata Autocomp Ltd. (TACO) and Automotive Stampings and Assemblies Limited (ASAL) was to be transferred to the Petitioner. After repeated requests, the Respondent no. 2, In November 2010, reluctantly issued letters to the above companies for transferring the Company's business with them to the Petitioner. Subsequently, business with TACO and ASAL came to be transferred to the Petitioner but the business with AMW was not transferred. When the Petitioner approached AMW on this, it was informed to him that the Respondent No. 2 has specifically

communicated to them to not to transfer any business. On being confronted on this, the Respondent No. 2 stated that he would not let the business with AMW be transferred to the Petitioner at any cost.

2.14. Therefore, on 27th December 2010, the Petitioner through his advocate issued a legal notice to the Respondent No. 2 calling upon him to transfer the Company's business with AMW to the Petitioner and to comply with the settlement resolution dated 21st September 2010.

2.15. The Respondent No.2 through his advocate replied to the above legal notice by letter dated 12th January 2011 stating inter alia that the settlement arrived at between the parties and the resolution passed in the meeting recording the said settlement had no validity or sanctity in law as the meeting was not validly convened, without following proper procedure and as such the settlement resolution was not binding on the Company. It was further stated that the Respondent No.2 is not liable to comply with the demands made by the Petitioner as per the settlement resolution dated 21st September 2010.

2.16. Before the Petitioner had received the above reply, he had also addressed a letter dated 3rd January 2011 to the Registrar of Companies, Pune complaining of the aforesaid oppressive and prejudicial acts of the majority shareholders of the Company vis-à-vis the dilution of his shareholding in the Company. A reply on behalf of the Company vide letter dated 16th March 2011 was received from the ROC, Pune basically denying the

Petitioner's allegations of any dilution of his shareholding in the Company or any act of oppression by the Company.

2.17. It would be apt to mention here that ever since the Petitioner submitted his resignation from directorship of the Company as a precondition to the settlement, not only did the Respondent No.2 fail to fulfill his part of the obligations under the said settlement but he started to constantly abuse, threaten and intimidate the Petitioner; he had attempted to assault the Petitioner; further he prevented the Petitioner from entering his own office premises; further he forcibly took away the tools and fixtures being used by the Petitioner in his workshop and kept it locked in a room and cheated the Petitioner by falling back on the settlement. So, the Petitioner went to lodge an FIR but police failed to register the same. Thus, Petitioner filed a complaint under Section 156(3) Cr.P.C before the JMFC, Pune pursuant to which the Magistrate directed police to register FIR and accordingly FIR came to be registered against the Respondent Nos.2 & 3 on 27th January 2011 for offences punishable u/s 406, 420, 341, 504, 506 read with Sec. 34 IPC.

2.18. Fearing arrest, the Respondent No.2 roped in relatives and family members to negotiate a settlement and to persuade the Petitioner to withdraw the criminal complaint. By mutual consent of the parties, 3 family members and friends were requested to mediate in the matter. On 28th January 2011, a MOU was arrived at where it was essentially agreed upon that by 31st March 2011, the parties shall comply with the earlier settlement resolution dated 21st September 2010 and share the properties of the Company.

2.19. Subsequently, the Respondent No. 2 applied for anticipatory bail u/s 438 Cr.P.C in the criminal complaint /FIR launched against him by the Petitioner and the same was granted by the Addl. Sessions Judge, Pune.

2.20. Much to the Petitioner's frustration, the Respondent No. 2 sent a notice calling for an Extraordinary General Meeting of the Company for sale of Company land at Mugavde, instead of complying with the settlement resolution dated 21st September 2010 and the aforesaid MOU as agreed upon. It was proposed that sole authority for the sale be given to the Respondent no.2. No explanation or reason was given for the aforesaid sale in the notice or in the meeting. The Petitioner opposed the Respondent No.2's unilateral authority for the sale in view of the settlement arrived at between the parties vide resolution dated 21st September 2010. The Petitioner stated that both he and the Respondent no. 2 must have joint authority for the sale of the land in order to safeguard his rights and Interests. Ignoring the Petitioner's opposition, a resolution came to be passed for the said sale on 5th December 2011.

2.21. A charge-sheet came to be filed by police in the said criminal case on 10th April 2012 charging the Respondent Nos. 2 & 3 of conspiring to cheat, threaten and Intimidate the Petitioner thereby committing offences punishable u/s 406, 420, 341, 504, 506 read with Sec. 34 IPC. Criminal proceedings were launched against the above Respondents and the same are still pending.

2.22. During pendency of the aforesaid criminal proceedings the Respondents merely offered verbally to settle the matter several times but at no point of time was any real attempt made by them or any steps taken in furtherance of the same. They even falsely submitted before the Trial court stating that the parties were in talks and are considering settlement, but there were absolutely no steps taken by them to comply with the agreed terms in the settlement resolution dated 21st September 2010. All this while, the Petitioner kept believing that the offers made by the Respondents were genuine but they were in fact hollow and bogus and only to circumvent the criminal trial against them. This can be evidenced by a recent application filed on behalf of the Respondent Nos. 2 & 3 before the Magistrate court on 3rd July 2017 and the letter dated 1st August 2017 issued by their Advocate and the reply to the said letter by the Petitioner's Advocate dated 30th October 2017.

2.23. That it is an admitted position that the said Respondents have failed to comply with the settlement resolution dated 21st September 2010 and fulfill the terms therein. It is also not in dispute that owing to the breakdown of relations between the parties, there was a complete deadlock in the Company thereby affecting Its business. As a result, a settlement was arrived at by all the family members in terms of resolution passed in the Company's Board meeting dated 21st September 2010. Despite that, nothing was done by the said Respondents in pursuance thereof. It is submitted that the Respondents cannot now be permitted to take advantage of their own wrong on the ground of non-convening of a valid meeting or any other procedural Irregularity. Nevertheless, the aforesaid settlement which was

passed in the Company's Board meeting was binding on the parties thereto.

- 2.24. It is lastly submitted that the settlement resolution in question is a voluntary and bonafide one so as to resolve the disputes between the family members and break the deadlock in the Company. Since the Respondent Nos.2 & 3 have failed to comply with the settlement resolution, the Petitioner seeks the Intervention of this Tribunal. There has been a total lack of probity and fair dealing by the Respondents thus affecting the rights of the Petitioner as a shareholder. The reliefs prayed for herein, if granted, would do complete justice between the parties and would bring to an end the matters complained of.
3. The Respondent have filed the reply and submitted that the petitioner seeks to enforce a family settlement through present petition filed u/s 397-398 of the Companies Act, 1956 and this Tribunal does not have power to enforce the same. Further, the present petition is not maintainable on ground of delay & laches as the petition has been filed after 7 & 10 years of the ground of oppression having taken place i.e. 2010 & 2007. The increase in capital by way of Rights Issue was within knowledge of the Petitioner as the Petitioner himself made application for allotment and was allotted shares and the Petitioner in his capacity as director had signed Balance Sheet for 3 years thereafter. The Respondent has relied upon decision in the case of *Chatterjee Petrochem (India) Pvt. Ltd. vs. Haldia Petrochemical Ltd. (2011) 10 SCC 466 (Para 10)* & *R. Balakrishnan v. Vijay Dairy and Farm Products Ltd. (2005) 125 Comp Cases 661*.
4. Heard learned Counsel and perused the material on record.

- 4.1. It is undisputed fact that the Petitioner No. 1 had signed the Financial Statements for the years subsequent to the dilution of the Shareholding; accordingly, he could not have needed ignorance of dilution of Shareholding. Further, the shares in the subsequent issue of the Capital were applied by the Petitioner and allotted to him. Accordingly, we do not find that Respondent No. 2 had carried out any act at the back of the Petitioners so as to constitute the act of issuing further Capital resulting into dilution of Petitioner's shareholding to be harsh or burdensome
- 4.2. We note that a settlement dt. 21.09.2010 was arrived at between the Petitioner and the Respondent No. 2 and a Resolution was passed in the meeting of the Board of Directors of the Respondent No. 1 Company to take on record the said settlement. The said settlement recorded that all the assets and liabilities as on 30.09.2010 to be shared by both the parties i.e. SH. R.S. Kanda, the Respondent No. 2 and SH. B.S. Kanda, the Petitioner.
- 4.3. Thereafter, a Memorandum of Understanding (MOU) was drawn in the presence of SH. Charanjit Singh Kanda and SH. Kulwant Singh Kanda, which again reiterated that the all the liabilities of the Respondent No. 1 Company shall be shared by both the Parties and cleared before 31.03.2011 in the MOU dt. 28.01.2011.
- 4.4. We further note that a First Information Report was filed by the Petitioner against the Respondent which records that *"the said accused to get advantage of complainant's trust for their own gains and deprive the complainant of his half share as per the Resolution which was prepared after taking the Complainant's signature"*. Further, the undertaking for Arbitration was duly signed before

Mr. Ashok Chapekar, Mr. Shankar Mahbubani and Mr. Sathe and were entrusted with the task to give verdict regarding the Resolution passed on 21.09.2010. Accordingly, this Panel determined Rs. 326, 83,406.50 as a 50% of liability referred to in Resolution dt. 21.09.2010, payable by the Petitioner *vide* Arbitration Award dt. 17.12.2011.

4.5. We are of the view that the Petitioner attempted to settle the dispute in relation to the quantification of 50% of the shares in the liabilities in the Respondent No. 1 Company which he was to bear in terms of Resolution dt. 21.09.2010. The Petitioner has challenged the authenticity of the said Resolution; however, we find from the complaint recorded by the Police Station at his behest that he has not alleged the Resolution to be a forged document. On the contrary the Petitioner has relied upon the said document and alleged that the Respondent No. 2 is denying half shares as per the Resolution. The quantum of liability to be borne by the Petitioner has been quantified by Third Person being entrusted the task of determining so by both the Parties. The Petitioner heavily relied upon the Financial Statements of the Respondent No. 1 Company to contend that this quantification is not correct. However, we note that the Resolution dt. 21.09.2010 provided the manner in which assets and liabilities to be shared and the quantification guarantee was carried out by third person duly appointed by both the Parties, we do not find any merit in the contention of the Petitioner. Even so this dispute is more in nature of determination of right of the parties under the settlement agreement and cannot be said to be continuing act so as to justify the invocation of discretionary power in terms of Section 397-398 of the Companies Act, 1956.

4.6. We further note that the Respondents have alleged non-compliance of the Resolution dt. 21.09.2010 on the part of the Petitioner. This further confirms that the issue before us is more in nature of enforcement of specific performance of the arrangement, which is a family settlement between Two Brothers, entered into between the Parties *vide* Resolution dt. 21.09.2010 in relation to the assets and liabilities. We are of the view that both the Parties are equally responsible to implement to the Resolution dt. 21.09.2010 and it cannot be said that the act of Respondents is oppressive to the Petitioners. In these circumstances, we are of the view that the facts of the present Case cannot lead this Tribunal to form a view to wind up the affairs of the Respondent Company.

4.7. We note that in the case of *R. Balakrishnan & Ors. vs. Vijay Dairy and Farm Products P. Ltd. and Others 2004 SCC OnLine CLB 2005*, the Hon'ble Company Law Board held that "*These past acts, forming part of the agreement reached between the disputed parties and the remedy under section 397/398 being of a preventive nature, as borne out by several decisions cited supra, the Company Law Board cannot take cognisance of such acts under the provisions of section 397 & 398. The Company petition, to my mind, is intended for the purpose of recovering the money due by the respondents under the settlement agreement, which is not an object contemplated in section 397*". Further, the Hon'ble Supreme Court in the case of *Chatterjee Petrochem (India) Pvt. Ltd. vs. Haldia Petrochemical Ltd.* held that "*the remedy for failure of the one of the parties to a private arrangement to abide by its commitments is not under section 397 of the Companies Act*".

4.8. We also note that the Resolution for sale of property at Village Mugawade was passed on 05.12.2011 and the Respondents

pleaded that this was necessitated to liquidate the liabilities of the Respondent Company. The Petitioner has not brought on record any evidence that the sale of this property was contemplated for inadequate consideration, accordingly, we are of the view that we cannot interfere in the normal business decisions of the management of the Company unless those decisions are demonstrated to be prejudicial to the interest of the Company and its Members.

4.9. Accordingly, we are of the view that the Petitioner has failed to make out the case of oppression and mis-management and this Petition deserves to be dismissed.

4.10. The CA No. 380 of 2023, seeks interim relief. Since, the Company Petition 743 of 2017 is being dismissed, the said Company Application bearing CA No. 380 of 2023 also stand closed and all other Applications, if any, arising out of the present Company Petition bearing CP No. 743 of 2017, also stand closed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)