

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **26.04.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No :
Petition No : CP(CA)/127(CHE)/2023
Name of Petitioner : Marappan Sivasamy and Other
& Vs
Name of Respondent : Shobikaa Impex Pvt Ltd & 22 Others
Section : Sec 59 of CA, 2013

ORDER

Present: None.

Vide separate order pronounced in the open court, the petition is allowed.

File be consigned to records.

-sd-

**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

Under Sections 59 of the Companies Act, 2013

In the matter of *Shobikaa Impex Private Limited & 22 others*

CP(CA)/127(CHE)/2023

1. MARAPPAN SIVASAMY

2. S.KALPANA

... Applicants

-Vs-

1. M/S SHOBIKAA IMPEX PRIVATE LIMITED

2. AYYAMPALAYAM RAMASAMY MALAIYAPPASAMY

3. RAJINIKANTH BHARATHI

4. RENGASAMY GOPALAKRISHNAN

5. KUPPUSAMY VISWANATHAN

6. SUBRAMANI NAVANEETHAN

7. RAMASAMY MAHENDRAN

8. SEMALAIGOUNDER ECHAMPATTI MANI

9. RAJENDRAN GOMATHI

10. PERUMAL GOUNDER RAJENDRAN

11. VAIYAPURI KARTHIKEYAN

12. MUTHUSAMY PALANIVELAN

13. P. SHANMUGAVEL

14. P. BALAMURALIKRISHNAN

15. KARUPPUSAMY MOORTHY

16. RAMALINGAM SELVARANI

17. PALANIAPPA GOUNDER NAVALADI

18. GOVINDAMPALAYAM VELUSAMY ARUN

19. BALAMURALIKRISHNAN SANTHI

20. KANESAN REVATHI
21. KALIAPPAN KANAGARAJ
22. KANDASAMY SUGUMAR
23. P. SEKAR

...Respondents

Order Pronounced on 26th April 2024

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKAT RAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Applicant(s): Vidhya Shankar, Advocate
For Respondent(s): None Present*

ORDER

(Heard Through-VC-)

This Application has been filed under section 59 of the Companies Act, 2013 seeking the following reliefs:-

- "a) Direct the rectification of the Register of Members of the 1st Respondent Company by setting aside the allotment of 14,70,534 equity shares of Rs.100/- each made on 15.02.2018.*
- b) Grant the Petitioners such further or other reliefs as may be just and necessary in the circumstances of the case; and*
- c) Grant the Petitioner the cost of the Petition."*

2. It is stated that the R1 Company is engaged in the business of manufacturing and sale of insecticide treated mosquito nets. The products of the R1 Company are under the brand name "DURANET". The shareholding pattern of Shobikaa, before the impugned allotment took place, on 15.02.2018, is extracted hereunder:-

S.NO	NAME OF THE SHARE HOLDER	NO OF SHARES ALLOTTED AS ON 31.03.2017	ADDITIONAL SHARES ALLOTTED ON 20.11.2017	TOTAL NO. OF SHARES UP TO 14.02.2018
1	M. Sivasamy	2,92,426	8,77,278	1,169,704
2	S. Kalpana	2,38,459	7,15,377	9,53,836

3. It is stated that in respect of this sum, R1 company allotted shares for a consideration of Rs.124.99 Crores to Respondents 2 to 23 being the creditors to whom the said sum of Rs.124.99 Crores was due. The allotment was made pursuant to the Board Resolution dated 15.02.2018. Return of allotment in form PAS-3 was duly filed with the Registrar of Companies. The details of allotment are averred in para 2 of the Application.

4. It is stated that, the Balance Sheet of R1 Company for the Financial Years 2013-14 to 2017-18 discloses that the payment of Rs.300.43 crores was due to the creditors. The total value of the creditors aggregated to a sum of Rs.313.53 crore as on 31.03.2018, which consist of Rs.188.54 crore under Trade payables and Rs.124.99 crores under the head share capital and share premium accounts in the Balance Sheet as at 31.03.2018.

5. The details of Allotment of shares are as follows:

S. NO	NAME OF THE SHARE HOLDER	No of shares allotted	Par Value	Share Premium	Total consideration
1.	AYYAMPALAYAM RAMASAMY MALAIYAPPASAMY (2 nd Respondent)	82964	8296400	62223000	70519400
2.	RAJINIKANTH BHARATHI (3 rd Respondent)	88790	8879000	66592500	75471500

3.	RENGASAMY GOPALAKRISHNAN (4 th Respondent)	91447	9144700	68585250	77729950
4.	KUPPUSAMY VISWANATHAN (5 th Respondent)	83952	8395200	62964000	71359200
5.	SUBRAMANI NAVANEETHAN (6 th Respondent)	81447	8144700	61085250	69229950
6.	RAMASAMY MAHENDRAN (7 th Respondent)	87105	8710500	65328750	74039250
7.	SEMALAIGOUNDER ECHAMPATTI MANI (8 th Respondent)	82647	8264700	61985250	70249950
8.	RAJENDRAN GOMATHI (9 th Respondent)	79952	7995200	59964000	67959200
9.	PERUMAL GOUNDER RAJENDRAN (10 th Respondent)	79752	7975200	59814000	67789200
10.	VAIYAPURI KARTHIKEYAN (11 th Respondent)	82988	8298800	62241000	70539800
11.	MUTHUSAMY PALANIVELAN (12 th Respondent)	89929	8992900	67446750	76439650
12.	P.SHANMUGAVEL, PARTNER REPRESENTING ANITHA KNITS (13 th Respondent)	89047	8904700	66785250	75689950
13.	P.BALAMURALIKRI SHNAN , PARTNER REPRESENTING MAHESH FILAMENTS (14 th Respondent)	87082	8708200	65311500	74019700
14.	KARUPPUSAMY MOORTHY (15 th Respondent)	40517	4051700	30387750	34439450

15.	RAMALINGAM SELVARANI (16 th Respondent)	42223	4222300	31667250	35889550
16.	PALANIAPPA GOUNDER NAVALADI (17 th Respondent)	42235	4223500	31676250	35899750
17.	GOVINDAMPALAYA M VELUSAMY ARUN (18 th Respondent)	43835	4383500	32876250	37259750
18.	BALAMURALIKRISH NAN SANTHI (19 th Respondent)	37776	3777600	28332000	32109600
19.	KANESAN REVATHI (20 th Respondent)	35329	3532900	26496750	30029650
20.	KALIAPPAN KANAGARAJ (21 st Respondent)	40094	4009400	30070500	34079900
21.	KANDASAMY SUGUMAR (22 nd Respondent)	38188	3818800	28641000	32459800
22.	P.SEKAR, PARTNER REPRESENTING SRI SAI KNITS (23 rd Respondent)	43235	4323500	32426250	36749750
	TOTAL	1470534	147053400	1102900500	1249953900

6. It is stated that, the shares that were allotted on 15.02.2018, were subsequently transferred in the name of the Petitioners on 09.08.2019, 16.08.2019, 20.08.2019 & 22.07.2019. The transfers were duly approved by the board resolution and the name of the Petitioners as the transferee was duly reflected in the register members of R1 Company. The names of the

Petitioners were also duly disclosed as the shareholders in respect of the original allotment made on 15.02.2018, in the Annual Returns of R1 Company for the year of 2019 onwards. The details of the transfer is stated in para 3 of the Application.

7. It is stated that a search under Section 132 of the Income Tax Act was conducted in the premises of R1 Company and also in the premises of Directors and key employees of R1 Company on 15.11.2019, and some cash and other valuables were recovered.

8. It is stated that, as a consequence of search and the recovery, R1 Company filed a settlement application before the Interim Board for Settlement, New Delhi for Assessment Years 2014-15 to 2020-21. After exhaustive enquiry, the Interim Board for Settlement passed a final order dated 12.06.2023. The computation of income, as ordered by the Interim Board of Settlement is stated in para 4 of the Application.

9. It is stated that, the Income Tax Department sought to contend (as noted in paragraph 8.3 at page 6 of the order of Interim Board for Settlement), that the sundry creditors in the balance sheet were bogus and that equity shares were allotted for the cumulative amount of sundry

creditors and such allotted shares were subsequently purchased by the Promoters.

10. It is stated that, the Interim Board for Settlement *inter alia* adjudicated this issue and concluded that the creditors were not bogus but transactions were real but nevertheless concluded that the entire value of sundry creditors should be deemed as not having been paid and to be reckoned as income arising as a consequence of remission of liability. It is stated that in paragraph 10.6 of page 53 and 54 of the order of the Interim Board for Settlement, it was settled that entire Rs.300.43 crores be reckoned as income under Section 41 (1) of the Income Tax Act for the Assessment Year 2020-21.

11. It is stated that, the consequence of the Interim board for settlement order is that the liability to the creditors is written off and offered as income. Further, the issue of capital made on 15.02.2018 for corresponding entry/reciprocal consideration is required to be reversed. It is stated that the allotment of shares made on 15.02.2018, is without consideration and the said allotment itself is invalid.

12. It is stated that R1 Company has accepted the order of Interim Board for Settlement and also paid tax on additional income determined. Since the capital issued as representing discharge of liability to creditors, has been ordered to be reversed by the Interim Board for Settlement by determining the value of creditors as income, the natural consequence is that the allotment of shares made on 15.02.2018 is required to be set aside.

13. It is stated that, the consequence of the order of Interim Board for Settlement is that the sum of Rs300.43 crores which includes sum of Rs.124.99 crores is required to be charged to the profit and loss account, reversing the capital entry.

14. It is stated that the Interim Board for Settlement has vide paragraph 14 at page 62 of the order granted immunity from prosecution and penalty as well considering the facts and circumstance of the case. Under such circumstances, the Petitioner has prayed for allowing the Application.

15. The Respondents in this matter have filed the reply/ counter statement before the Tribunal giving their no-objection for allowing the present petition.

16. Heard the submissions made by Learned Counsel for the Petitioner. In the present case, the Petitioner has shown that there is a sufficient cause to order rectification of registry of members. It is also pointed out that if the allotment is not set aside there will be irregularity since the register of members and books accounts would be erroneous and will not reflect the impact of the order of the Interim Board for Settlement. The Respondents have also given their no objection to the reliefs as sought in the petition.

17. Thus, taking into consideration the facts and circumstances of the present case, we hereby pass the following order;

- (a) the allotment of 14,70,534 equity shares of Rs.100/- each made by the 1st Respondent Company on 15.02.2018 is *set aside*.
- (b) 1st Respondent Company is directed to rectify its Register of Members accordingly.

18. With the above direction, this **CP(CA)/127(CHE)/2023** stands **allowed**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)