

**In Re: Mansani Constructions**

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**Court :** Company Law Board CLB

**Decided On :** Apr-17-2008

**Judge :** K Balu

**Appellant :** In Re: Mansani Constructions

**Judgement :**

1. The petitioner claiming 40% of the paid up capital of M/s. Mansani Constructions Private Limited ("the Company"), by virtue of transfer of 23,200 shares effected by certain shareholders in January 2007, has invoked the jurisdiction of the Company Law Board for reliefs under Sections 397 and 398 of the Companies Act, 1956 ("the Act"), on account of certain acts of oppression and mismanagement in the affairs of the Company and pending the making of final order, the petitioner, with a view to regulate the conduct of the Company's affairs, has been urging for interim reliefs, as under: a) to restrain the second respondent from acting as the Managing Director of the Company, stripping him of all the administrative powers; b) to appoint the petitioner as the Chairman and Managing Director of the Company; c) to restrain the second respondent from using the name "Mansani" in all his personal ventures that may be undertaken in the real estate sector; d) to direct the second respondent to produce the Company's books of account, records and other vouchers kept in his custody; e) to maintain shareholding pattern till disposal of the company petition; f) not to sell or dispose of any immovable property belonging to the Company as well as the fourth respondent, a proprietary concern owned and operated by the second respondent; and g) to direct the fourth respondent to furnish details of income and expenditure

on periodical basis.

2. Shri V.S. Raju, learned Counsel has challenged the very maintainability of the company petition on the premise that the petitioner is never a shareholder of the Company and that the purported board minutes dated 23.01.2007, disclosing the consent of the board of directors for the transfer of 23,200 shares (200 + 5000 by third respondent and 18,000 by second respondent) are fabricated, without conveying any valid title in favour of the petitioner. The petitioner, taking advantage of the signatures of the second respondent on blank papers, has fabricated the minutes of the board meeting allegedly held on 23.01.2007. The disputed board minutes are comprised of four sheets, whereas, the last sheet does not contain the signature of the second respondent, which confirms the manifestation of the board minutes at the instance of the petitioner. The petitioner, in support of his title to the shares, has not chosen to produce the original share certificates or any particulars thereof such as share certificate numbers or distinctive or folio numbers or instruments of transfer, in the absence of which he cannot validly claim to be a shareholder of the Company. The petitioner has not produced any material establishing the payment of any consideration for acquiring 23,200 shares from the respondents 2 & 3. The second respondent has been carrying on construction activities, in the name of the fourth respondent, since the year 1999 and later in 2004, expanded the construction business by incorporating the first respondent Company. The petitioner, working as an executive engineer with Government of Andhra Pradesh, never involved in any of the activities of the Company. At the insistence of the petitioner, on taking voluntary retirement, he came to be inducted in the board of the Company, for which no qualification shares need be held, in terms of Clause 37 of the articles of association of the Company. Thus, the petitioner is a director, but never a shareholder, as claimed by him.

3. According to Shri S. Chidambaram, learned Authorised Representative, the petitioner, being the father and the husband of the respondents 2 & 3 respectively, on his retirement from the Government service, became a director of the Company and was appointed at the board meeting held on 23.01.2007, as the Chairman of the board as well as the general meetings. At the same board meeting the board

(a) accorded its consent for the transfer of 23,200 shares effected by the respondents 2 & 3 in favour of the petitioner: (b) decided to open the bank account with Andhra Bank, Hyderabad; and (c) authorized the petitioner and the second respondent to operate the bank account. This board minutes are signed by the petitioner as well as the second respondent. The attendance sheet for the board meeting contains the signatures of the petitioner and the second respondent signifying the presence of the petitioner at the aforesaid board meeting. The petitioner, pursuant to the board resolution approving the transfers, became entitled to 23,200 shares, of the Company. The Company, acting upon the board resolution of 23.01.2007, opened an account with Andhra Bank, which is being operated by the petitioner and the second respondent, as the Chairman and Managing Director, respectively of the Company, as borne out by certificate dated 25.06.2007 and statements of account issued by Andhra Bank and as many as 70 cheques issued during the period between 21.02.2007 and 04.07.2007 by the petitioner and the second respondent in the name of the Company favouring its constituents accounting for over Rs. 70 lakhs. Similarly, the Company's accounts with the Citizen Co-operative Society Limited and Dena Bank, Hyderabad are to be operated by the petitioner and the second respondent jointly, on the strength of the written request dated 30.11.2006 of the second respondent and the board resolution dated 30.11.2006 resolving to open and operate a current account jointly by the Chairman and Managing Director of the Company. Thus, the petitioner is being involved in the day-to-day financial transactions of the Company. The second respondent has committed on 20.09.2007 theft of among other things, files, including the share certificates belonging to the petitioner, in his absence, which was followed by a police complaint and a private complaint before the Metropolitan Magistrate Court, Cyberabad, Ranga Reddy District at L.B. Nagar lodged, copies of which are on record before the Bench. The petitioner along with the third respondent filed a writ petition (W.P. No. 28022 of 2007) before the High Court of Andhra Pradesh in December 2007, seeking directions against the police and other authorities to enquire into the complaints made against the second respondent herein and take appropriate action under law and the writ proceedings are pending before the High Court. The second respondent started, with a view to make unlawful gains excluding the petitioner from the day-to-day operations of the

Company and selling indiscriminately the assets belonging to the Company as well as the fourth respondent, which warrant the immediate interference of the CLB and therefore, urged for the various interim reliefs as claimed by the petitioner, thereby safeguarding the interest of the Company and its shareholders.

4. I have considered the arguments advanced on behalf of the parties.

The legality of acquisition of 23,200 shares by way of transfers, in the name of the petitioner, on strength of which the provisions of Sections 397 and 398 have been invoked, is being seriously challenged, which necessarily necessitates the Bench to adjudicate the issue of maintainability of the main petition, as provided in Section 399 of the Act, without, however rejecting it in limine and disqualifying the petitioner at the threshold. The petitioner's shareholding is claimed beyond 10% of the issued and paid up capital of the Company on basis of the transfers effected by the respondents 2 & 3, which are impugned by the second respondent. The petitioner, in the words of the second respondent is a director but never a member of the Company, whereas the former is sustaining his title to the impugned shares on the lone board minutes dated 23.01.2007 approving the transfers, the relevant portion of which recites as under: The Chairman informed the board that the company has received application for share transfers, the details of which are placed before the board: The board after going through the details accorded their approval for share transfers and in this connection the following resolution was passed: Resolved that the board accords its consent for the transfer of shares in the following manner:-----S.No. Name of the transferor Name of the transferee1.

Mansani Rama Mansani 200 Srinivasulu2.

Mansani Rama Mansani 5000 Srinivasulu3.

Mansani Krishna Mansani 18000 Kishore Srinivasulu The board took note of the shareholding pattern of Mr Mansani Krishna Kishore as 60% and Mansani Srinivasulu as 40%.

A plain reading of the board resolution, notwithstanding the stigma attached to it, would show that (a) the Company has received the application for transfer of 23,200 shares, with the respondents 2 & 3 as the transferors and the petitioner being the transferee; (b) the board went through the details of the application; (c) the board accorded its approval and consent for share transfers, as per the details contained in the resolution. The relevant articles governing transfer of shares are embodied in Clauses 16 to 21 and 23 and 25 thereof. The articles of association possessing statutory recognition, have a binding effect on the company and its members and also between the members inter se in relation to their rights as such members, and therefore, the company and the members are bound by obligations imposed by the articles. It is well settled that where any transfer of shares is in violation of articles, such transfer would not be binding on the Company. I shall, therefore, proceed to consider whether the impugned transfers are in strict compliance with articles of association of the Company to test the validity of transfer of 23,200 shares in favour of the petitioner, thereby determining his right to apply under Sections 397 & 398 in case of oppression and mismanagement. The applicable Clauses are as under: 16. Shares cannot be transferred except to a person agreed to by the majority of Board of Directors as being fit and proper person to hold such shares.

17. On the death or insolvency of any holder of shares the Directors may nominate any person as being a fit and proper person to hold such shares and on such nomination the heir of the deceased or the assignee of the insolvent shall be bound to transfer the shares to the person as nominated.

18. Subject to the provisions of Clause 17 above no share shall be transferred to any person as long as any person selected by the directors is willing to purchase the same at its fair value.

19. The Person proposing to transfer any share (hereinafter called the proposing transferor) shall give notice in writing to the company that he desires to transfer the same. Such notice may specify the sum to be fixed as the sale value and shall constitute the company as his agents for transferring the shares to any members of the company or persons selected as aforesaid at the prices so fixed at the

option of the purchaser at the fair value to be ascertained hereunder. The transfer notice may include several shares and in such case shall operate as if it were a separate notice in respect of each. The transfer notice shall not be recoverable except with the sanction of the Directors.

20. If the Company, shall within the space of thirty days after being served with such notice find a members or person selected as aforesaid willing to purchase the share (herein after called the purchasing member) and shall give notice thereof to the proposing transfer or shall be bound upon payment of the fair value to transfer the shares to the purchasing member or members.

21. (i) The company shall, as its general meeting determine the fair value of each share for this purpose and the said fair value shall be in force unless otherwise altered.

(ii) In case any difference arises between the proposing transferor and the purchasing member as to the fair value of a share, the Auditors of the Company shall on the application of either party certify in writing the sum which, in their opinion, is the fair value and such sum shall be deemed to be the fair value, and the same shall be binding on the proposing transferor and the purchasing member.

23. If the company does not within the space of 30 days, after being served with transfer notice, find a member or person selected as aforesaid willing to purchase the shares, and give notice in the manner aforesaid the proposing transferor shall at any time within the three calender months thereafter be at liberty (Subject to Article 3) to sell and transfer the share to any person and at any price. If no action has been taken by either party within the period the whole proceeding should be treated as cancelled and fresh notice and procedure as aforesaid once again in case transfer is desired.

25. A fee not exceeding one rupee may be charged for each transfer and shall, if so required by the directors, be paid before the Registration thereof or be waived as the Board of Directors may determine from time to time.

After a careful scrutiny of the materials made available before the Bench, I do not see anything to suggest and establish that: a) the majority of board agreed that the petitioner is a fit and proper person to hold 23,200 transferred by the respondents 2 & 3 (Article 16); b) the petitioner purchased 23,200 shares at their fair value (Article 18); c) the respondents 2 & 3 gave any notice in writing to the Company, desiring to transfer 23,200 shares (second respondent 18000 and third respondent 5200), as stipulated in Article 19, namely, constituting the Company as their agent for transferring the shares to any members of the Company and specifying the sale value of shares; d) the Company found the petitioner, to be the purchasing member in accordance with Article 20; e) the fair value of 23,200 shares has been determined at the general meeting of the Company (Article 21(i)); f) any fair value of the shares has been fixed either by the respondents 2 & 3 or the petitioner, [Article 21(ii)]; and g) that any fee not exceeding one rupee has been either charged for each of the impugned transfers before registration of the transfers by the board or waiver of any such fee (Article 25).

It is thus clearly found that none of the essential requirements of the articles dealing transfer of shares is duly met in respect of the transfers impugned by the respondents. The acquisition of 23,200 shares by way of transfers on the part of the petitioner, in flagrant violation of the articles of association of the Company, is non est in the eyes of law and therefore, cannot claim to be a shareholder, remedying any of his grievances under Section 397 & 398. It is relevant to observe that the petitioner never styled himself to be a shareholder of the Company save in the company petition, drawing support from a solitary, but contentious board minutes dated 23.01.2007, approving the impugned transfers in favour of the petitioner. In the complaint lodged with the Commissioner of Police, Cyberabad, Andhra Pradesh, on 03.10.2007, the petitioner and the third respondent categorically described the petitioner as Chairman of the Company, but never disclosed his purported holding of 40% of shares of the Company. The police complaint lodged on 06.10.2007 with the Commissioner of Police, Hyderabad by the petitioner against the second respondent, on account of theft of files, from the residential house of the petitioner, while deals inter-alia with the incorporation of the Company, specially reports that the Company passed a resolution on 23.01.2007 appointing him as Chairman of the Company with effect from

23.01.2007, but the complaint is conspicuously silent about the board resolution according consent of the board for the transfer of 23,200 shares in favour of the petitioner and noting of the shareholding pattern of the petitioner as 40%, which to my mind is oddly unnatural.

Any prudent person, ought to have, in the normal circumstances, reported in the police complaint, his status as a shareholder by acquisition of 40% of the shares, as approved by the board of directors in terms of the minutes dated 23.01.2007, which is apparently found lacking in the matter before me. It is, therefore, doubtful whether the board minutes dated 23.01.2007, as on the date of the above complaint did contain the board resolution, approving the transfers in the name of the petitioner, and thus the genuiness of the board minutes, containing the purported consent of the board for the transfer of 23,200 shares to the petitioner is in doubt. The police complaint dated 06.10.2007 does not either specify any theft of the original share certificates belonging to the petitioner. In the private complaint dated 29.10.2007 preferred against the second respondent, before the Metropolitan Magistrate Court, Cyberabad, the petitioner neither claimed to be a shareholder nor a director nor reported theft of his share certificates by the second respondent, but only complained of theft of the original sale deeds of about 180-200 customers and six personal diaries and his pension papers and nothing else. The list, forming part of the private complaint contains particulars of a large number of original sale deeds, running into as many as nine pages, does not even whisper about the original share certificates of the petitioner. There is no explanation for non-production of the original share certificates in respect of 23,200 acquired by the petitioner, winch shall be prima facie evidence of his title to such shares. The certificates are the only documentary evidence of title in possession ol any shareholder, which are not forthcoming from the petitioner.

There is also no material substantiating the payment of fair value of 23,200 shares by the petitioner in favour of the respondents 2 & 3.

5. In view of my foregoing conclusions, the petitioner's assertion, being a shareholder of the Company must fail. Having found that the acquisition of 23,200 shares by the petitioner is in gross violation of the articles of association of the

Company, the petitioner has no right to apply under Sections 307 & 398 of the Act and therefore, the company petition stands dismissed for want of any locus standi on the part of the petitioner. As a result, the application for impleadment of Smt. S.Swetha, wife of the second respondent (C.A. No. 41/2008) does not survive. In view of this the interim order dated 24.12.2007 is vacated.

Ordered accordingly.

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