FACIALS OF THE CASE

Mr. Avnish Mishra and Mr. Balvant Tripathi were partners holding equal stake in the business of the firm M/s. “Dream Comfort Enterprises”. The firm was basically into the business of running hotels, restaurants, board and lodging, and was generally into the business of rendering hospitality services to tourists.

With an intention to grow bigger, Mr. Avnish Mishra and Mr. Balvant Tripathi decided to convert the firm into a Company. For the said purpose, Mr. Dhavan Sharma, Mr. Eshwar Mehta, Mr. Santosh Thakkar, Mr. Govardhan Das and Mr. Harikrishna Pathak were brought in as partners, each holding 1% stake in the business of the firm.

The firm was converted to “Dream Comfort Hospitality Private Limited” and was incorporated at the Registrar of Companies at Bangalore on 2.05.2006 with Mr. Avnish Mishra, Mr. Balvant Tripathi, Mr. Dhavan Sharma, Mr. Eshwar Mehta, Mr. Santosh Thakkar, Mr. Govardhan Das, and Mr. Harikrishna Pathak as subscribers to the Memorandum of Association. Mr. Avnish Mishra and Mr. Balvant Tripathi, had subscribed to 40% shares each and the others had subscribed to 4% shares each. Mr. Avnish Mishra and Balvant Tripathi were the first directors of the Company.

The relevant portion of Memorandum of Association and Articles of Association are as follows:-

“Main objects to be pursued by the company:

1. To carry on the business as hoteliers, hotel properties, hotel managers and operators, refreshment contractors and caterers, restaurant keepers, refreshment room proprietors, milk and snack bar proprietors, café and tavern proprietors, board and lodging, bakers, confectioners, licensed victuallers, wine and spirit merchants, blenders and bottlers;
2. To carry on the business of running of clubs, swimming pools, cinema theatres and places of amusement, recreation, sport and entertainment of all kinds;
3. To establish and run a hotel management school for training in Hotel management
4. To act as authorized money changers”

“Table A to apply:

1. The Regulations contained in Table ‘A’ in First Schedule to the Companies Act, 1956, so far as they are applicable to Private Company as defined in the Act shall apply to this Company so far as they are not modified, varied, amended or altered by these articles.

Transfer of Shares:

2. No transfer of any shares shall be made or registered without the sanction of the board and the board shall have the absolute discretion to accept or reject any transfer of shares.
3. Any member desiring to sell any of his share must notify the Board of Directors of
the number of shares, the price and the name of the proposed transferee and the
Board must offer to the other share holders the number of shares offered at that
price. If there is any dispute about the price it shall be fixed by the Auditors of
the Company. If the offer is accepted the share shall be transferred to the
acceptors and if shares are not accepted within three months from the date of
notice to the Board, the holders may sell or transfer them or any of them at the
same or higher price to the third parties.

4. Article 2 and 3 above shall not apply to a transfer to a person who is already a
member of the company nor to a transfer by member to his wife, or issue nor to
a transfer merely for the purpose of executing the appointment of new trustees
nor to a transfer by executors or administrators, to a legatee under a will or to a
transfer by a trustee to a beneficiary provided that it is proved to the satisfaction
of the Board that the transfer bonafide falls within one of these exceptions.

5. **No share qualification:**
An individual need not hold shares for being appointed as a director of the
Company.

**Board of Directors**

6. The Board of Directors shall have the power to appoint any person as an alternate
director in the Company in the circumstances stated and subject to the provisions
of Section 313 of the Companies Act, 1956.

7. The Board of Directors may from time to time appoint any person or persons to
be additional directors, but the total number of Directors at any time shall not
exceed twelve.

8. The Board of Directors may, from time to time, appoint from themselves one or
more as Managing Directors and /or Executive Directors and/ or Technical
Director and / or Marketing Director on such terms and on such remuneration,
whether by way of salary or commission or participation in profits or partly by
way of one and partly by another, as they may think fit. The Board may define,
limit and restrict their powers. The Board may fix the remuneration of any
directors at its discretion in the manner the Board deems fit.

9. **Board Meeting:**
Subject to the provisions of the Companies Act, 1956 the quorum for a meeting
of the Board of Directors of the Company shall be one third of its total strength (any
fraction contained in that one third being rounded off as one) or two directors
whichever is higher.”

Mr. *Prasen Mishra*, a relative of Mr. *Avnish Mishra* had recently passed out of a hotel
management course. The Board of Directors of the company consisting of Mr. *Avnish
Mishra* and Mr. *Balvant Tripathi* appointed Mr. *Prasen Mishra* as a director on
22.10.2006.

Mr. *Dhavan Sharma*, Mr. *Eshwar Mehta*, Mr. *Santosh Thakkar* and Mr. *Govardhan Das*
sold their shares to Mr. *Avnish Mishra* and Mr. *Harikrishna Pathak* sold his shares to Mr.
*Prasen Mishra*.

Mr. *Prasen Mishra* brought in new and innovative ideas. However, there was difference
of opinion in all matters between Mr. *Balvant Tripathi* and Mr. *Prasen Mishra*. This
difference of opinion in all matters brought about a rift in the management of the
company. Some of the ideas brought a great positive development in the performance of the Company, while some created problems and resulted in loss for the Company. Mr. Balvant Tripathi objected to Mr. Prasen Mishra continuing as director of the Company.

The shares and transfer deeds were presented to the company for transfer on 3.12.2007. In a Board meeting held on 10.01.2008, there were many other matters which were taken up for consideration in which the share transfers also came up for consideration. Mr. Avnish Mishra, Mr. Balvant Tripathi and Mr. Prasen Mishra were present. 16% shares were transferred to Mr. Avnish Mishra and 4% shares were transferred to Mr. Prasen Mishra.

Mr. Balvant Tripathi filed a suit on 10.02.2008 in a civil court to restrain Mr. Prasen Mishra from acting as a director of the Company and to declare his actions as director of the Company as invalid.

In the light of certain new legislations passed by the Govt. having ramifications on the business of the Company, a Board Meeting was held on 20.05.2008 to review the business operations of the company and also to take new measures. In the meeting, Mr. Balvant Tripathi was made the chairman. But, all the suggestions made by Mr. Balvant Tripathi was shot down as not feasible. After the completion of the agenda for the meeting, Mr. Prasen Mishra made a proposal that there is a requirement for a Managing Director and that Mr. Avnish Mishra who is the majority shareholder be made the Managing Director of the Company. Balvant Tripathi the chairman of the meeting stated that Avnish Mishra was not the majority shareholder and that Avnish Mishra should not be made the Managing Director. Balvant Tripathi immediately concludes the meeting without deciding the issue and leaves without entertaining any further discussion.

Immediately, Mr. Prasen Mishra took over as the chairman of the meeting and stated that it since Balvant Tripathi has left without deciding the issue of Managing Director, an Extra Ordinary General Meeting be convened on 20.06.2008 to decide on the appointment of a Managing Director.

On getting to know this, Mr. Balvant Tripathi withdraws the suit immediately filed before the Civil Court and files a petition before the Company Law Board under Sections 111, 397 and 398 against the Company, Mr. Avnish Mishra and Mr. Prasen Mishra. Mr. Balvant Tripathi contends that the transfer of shares to Avnish Mishra was not valid since Avnish Mishra and Balvant Tripathi are equal stake holders and claims that it is a quasi partnership. Mr. Balvant Tripathi further contends that the intention of converting and maintaining equal shareholding shows quasi partnership. Further, Balvant Tripathi contends that the transfer of shares was not valid since Mr. Prasen Mishra was not a director as on the date of the meeting and should have vacated the office. Balvant Tripathi further contends that the transfer of shares in favour of Mr. Prasen Mishra is not in compliance with Articles 2, 3 and 4 of the Articles of Association of the Company. As such the transfer of shares be declared invalid.

Mr. Balvant Tripathi contends that there is oppression and mismanagement on the part of the respondents. Further, after Balvant Tripathi left, the meeting could not have continued in view of the fact that there was no quorum and that the act in itself shows oppression. Mr. Balvant Tripathi contends that the resolution passed in the Extra Ordinary General Meeting appointing Mr.Avnish Mishra should not be given effect to in view of the invalidity of the meeting. Further, Balvant Tripathi contends that there is deadlock in the board due to the acts of Mr.Avnish Mishra, and as such measures are sought to ensure that oppression and mismanagement is avoided in the future activities of the Company.

The matter is now set down for final disposal before the Company Law Board.