

MOOT COURT PROBLEM

Dwarka Lal & Sons Limited (hereinafter known as “Company”), having characteristics of a Private Limited Company, established by Mr. Manik Dwarkadas in 1858 is engaged in the business of ironworks, steelworks, cotton mills and hydroelectric power plants that proved crucial to India's industrial development. Mr. Manik Dwarkadas also established a Trust in the name of “Dwarka Lal & Sons” for carrying on philanthropist activities like maintaining and supporting schools, educational institutions, hospitals, provide relief in distress caused by the elements of nature such as famine, pestilence, fire, tempest, flood, earthquake or any other calamity, help advancement of learning in all its branches especially research work in medical and industrial problems, providing scholarship to students for pursuing higher education etc. The “Dwarka Lal & Sons” (hereinafter known as the Trust) holds 27% shareholding in the Company. The Trust with other Dwarka Family trusts collectively holds 40% shareholding in the company. Mr. Ryan Dwarkadas (Successor of Mr. Manik Dwarkadas) was appointed as Chairman of the group companies for a period of 24 years from 1990-2014 and thereafter retired from the official position.

The Company through its selection committee has approached Mr. Rustom Sodawala, who was also a member of Board of Directors of the Company to hold the position of Executive Chairman of the Company for four consecutive years (2014-2018). Mr. Rustom Sodawala accepted the offer and he was appointed as a Chairperson of the company on the basis of the assurance that he would be given a free hand in discharging his duties towards the company.

In 2015, Mr. Rustom Sodawala, through a Board meeting in the “Other items” and without giving any prior notice, was removed from the Directorship of the company on the ground that “the Board of Directors has lost Confidence in his leadership” and Mr. Ryan Dwarkadas was appointed as Interim Chairperson of the company. It was alleged that Mr. Rustom Sodawala has leaked the confidential information of the Company and its group Companies to outside third parties and also to media and he openly came out against the Directors of the Company and that of its Group Companies and the Trusts, which does not augur well for smooth functioning of the company. It was also alleged that Mr. Rustom Sodawala also passed material information about commercial transactions entered between the Company with its group company to Income Tax Authorities and made allegations of violating tax compliances against the directors of the concerned companies.

A group of shareholders, represented by Mr. Rustom Sodawala (hereinafter referred to as “the Petitioners”) challenged the removal of Mr. Rustom Sodawala from the position of Chairman of the company alleging that affairs of the Company are being conducted in an oppressive manner prejudicial to the interest of the Petitioners and public and filed a petition under section 241 and 242 of Companies Act, 2013 against other Directors of the Company and Trustees of the Trusts (hereinafter referred to as “the Respondents”). The Petitioner collectively holds 18% equity in the shareholding of the Company. The Petitioners challenged the removal of Mr. Rustom Sodawala and certain clauses of the Articles of Association before National Company Law Tribunal, New Delhi. The relevant clauses of AOA are as follows:-

- i. **Article 104** - The trustees of the Trust are entitled to nominate three Trust Nominated Directors;
- ii. **Article 121** - All decisions of the Board of Directors of the company would need affirmative consent of majority of the Trusts Nominated Directors.
- iii. **Article 121A** - The decisions of the Company to be brought to the Board of Directors of the Company.
- iv. **Article 86** - That so long as the Trust collectively hold at least 40 % of the paid up capital of the company, no quorum shall be constituted in the General meeting of the company unless one authorized representative jointly nominated by Dwarka Lal & Sons present in such meeting. The Trusts shall also have the right to nominate 1/3rd of the prevailing members of Board of Directors of the Company.
- v. **Article 118**- It has been provided that so long as Trusts collectively hold at least 40% of the paid up equity, the selection committee shall be constituted to recommend a person as Chairman of the Board of the company and such person would be appointed as Chairman by the Board. The process that is followed for the selection shall be repeated when removal of such chairman is contemplated by the Board.
- vi. **Article 121**- It provides that unless affirmative vote of majority of directors appointed by Dwarka Trusts voted in favor of such person, he cannot become Chairman of the company.

The Petitioners also put forth their contention that the Article of Association of the company has become a device for superintendence and control of the company by Mr. Ryan Dwarkadas who is acting as a Super Board by means of nominee directors appointed on behalf of the Trust. The Directors of the Company have not exercised their fiduciary responsibilities for and on behalf of the shareholders; the Directors have become mere puppets in the hands of Mr. Ryan Dwarkadas. The Petitioners contended the clauses of AOA on the ground among others that the powers contained in AOA of the Company is being exercised in a malafide manner prejudicial to the interests of shareholders of the Company.

It was also alleged that Mr. Rustom Sodawala was removed from the position of Executive Chairman of the company in the Board Meeting without putting him to prior notice, despite his tenure has not expired without giving any substantial reason apart from giving a purported reason that “***the Board of Directors lost the Confidence in his leadership***” and the decision is primarily based on a legal opinion, but no such legal opinion was placed before the Board at the time of his removal. It was also alleged that no selection committee was constituted for his removal from the position of Chairman of the Company.

The Petitioner further made allegations of breach of Insider Trading Regulations by the Trustees and Dwarka Group Companies. Issues were also raised about various projects of the Company including that Veno Car project

which was a dream project of Mr. Ryan Dwarkadas, had become a liability upon the company, as it had been continuously proven as a loss incurring business move and when the said factual matrix been raised or brought to the notice of the Board of Directors by Mr. Rustom Sodawala with recommendation that it should be shut down in the interest of the company, however, due to personal interest of Mr. Ryan Dwarkadas in the project, the decision to shut down the said project has not yet been taken which is prejudicial to the interests of the shareholders of the company.

At last the Petitioners allege that from the abovementioned facts it can be fairly stated that the affairs of the company have been conducted in a manner prejudicial to the interest of the Petitioners, the shareholders and company and also stands in violation of the provisions of the Companies Act, 2013 and principles of Corporate Governance.

After considering the facts of the case and relevant provisions of law, the Hon'ble National Company Law Tribunal had dismissed the Petition.

Now, the Appellant approaches National Company Law Appellate Tribunal, New Delhi challenging the impugned judgment passed by National Company Law Tribunal on the basis of the following issues.

Issues involved

1. Whether the act of the Respondents amounts to oppression or mismanagement under Section 241 and 242 or any other provisions of Companies Act, 2013 ?
2. Whether the Petitioners are eligible to seek remedy against the Articles of Association of the company on the ground of such Clauses being oppressive, unfair and prejudiced?
3. Whether the removal of Mr. Rustom Sodawala without giving any prior notice and without constitution of Selection Committee is against the provisions of Companies Act, 2013 and principles of natural justice?
4. Whether the Petitioners are eligible to seek proportional representation of Board in proportion to their shareholding?
5. Whether the respondent has violated the principles of corporate governance?