

MOOT COURT CASE

Factual Matrix

A, B, C & D incorporated a company ABCD Pvt. Ltd. during the year 2007 with an object of carrying on web designing business and invested a sum of Rs. 2.5 lakhs each hence the issued and paid up share capital was Rs. 10 lakhs divided into 1 lakh shares of Rs. 10 each and each holding equal no. of shares. The subscribers to the MoA & AoA were A, B, C & D whereas the first directors of the company were B & C as per the articles. The BMs are usually held with 1 day notice to the directors. The company purchased a property in the year 2008 for carrying on its business at a cost of Rs. 25 lakhs out of which Rs. 15 lakhs was lent by 'C' to the Co. repayable after 5 years. The Board decided to mortgage the Company's immovable property to the Bank in order to avail a loan of Rs. 25 lakhs and the sum availed was also utilised towards purchase of assets from the market. In respect of the security created in favour of the Bank the relevant forms were filed with the Registrar of Companies through 'M' a Company Secretary in Practice. The business was not picking up as anticipated hence the shareholders decided to increase the share capital and decided to go for further allotment since no additional loan can be availed from the Banks or financial institutions as it would risk repayment by the company as per the schedule alongwith interest. During April 2011 the Co. was converted into a Public Co. Later the shareholders and directors increased the share capital of the company to Rs. 50 lakhs thereby allotting shares to R, S, V, W of Rs. 10 lakhs each divided into 1 lakh shares of Rs. 10 each who invested in the company on the condition that S & V are made directors of the company and S is appointed as the Managing Director of the Co.

S & V were inducted on the Board at the Board meeting held on 24.06.2011 as additional directors and at the AGM held on 30.09.2011 'S' was appointed as the MD of the Co. for a term of 5 years and their appointment both of them as directors was approved by the shareholders and the shareholders also appointed 'W' as a director of the Co. 'ABC Ltd'. The Co. started making profits gradually since 2011 but the present board did not recommend any dividend to the shareholders ever since incorporation. The Board invested the profits in purchasing a land which was leased in 2012 to a Co. for Rs. 50,000/- per month in which the wife of 'V' is the MD. This lease was renewed on 01st April 2015 on same terms for a further period of three years

'S' alone was receiving managerial remuneration and the other directors were paid only the sitting fees. In 2013 'C' demanded repayment of money lent by him to the Co. with interest and the Board refused to pay any interest as it was not agreed upon. In August 2013 at the BM attended by all the directors, the Board increased the share capital by allotting 10,000 shares of Rs. 10 each to 'R', 'S', 'V', 'W', 'X', 'Y' & 'Z' thereby increasing the share capital to Rs. 57 lakhs and the said allotment was duly approved by the Board except 'B' and 'B' also complained that the managerial remuneration paid to 'S' is over and above what he is entitled to as per the law.

In the year 2014 'S' purchased a house in his name but the cheques were issued from the bank account of the Co. and the records of the company are under the custody of 'S' who authorised 'M' to maintain the same in accordance with law and 'M' also issued compliance certificate to the company until it was required, that all the provisions of law are duly complied with and the same was filed with the RoC. Further 'M' has issued compliance certificates from 2007 upto the year 2010 without any adverse remarks/qualifications whereas some of the forms for the relevant period were actually filed only under the CLSS scheme in 2010. In 2015, 'A' made a request to the Board to permit him inspection of the minutes of general meetings of the company but the same was refused by the company. 'D' expired on 22.03.2016 and his only legal heir 'L' had applied for transmission of shares in his favour and the register of members continued to show the name of 'D' until 05.08.2016. 'A' sold his entire shares to 'Q' on 25.07.2016 and the share transfer was approved at the BM on 04.08.2016.

As any amount of asking by A, B, C and D did not yield results. In the meantime, irked by frequent questioning the Board noted that A no longer holds qualification shares as per Article 29 of Articles of Association of the company, it was recorded that A had ceased to be a director on 04/08/2016, the date on which share transfer was approved and registered.

Further the Board of Directors issued a notice on 21st September 2016 calling for an extra-ordinary general meeting to remove B.

Article 29 read as follows:

"In order to be a director of the company a person must hold not less than 10 fully paid up shares of the company".

This call was not supported by any requisition of any member of the company nor was there any special notice. The EGM is going to be held on 15.10.2016. AGM 2016 has not yet been held and the company has obtained extension of time from Registrar of Companies.

In these factual matrix, 'Q', and 'B' jointly with 'L' decided to file a Petition U/s. 241 of the Companies Act, 2013 and accordingly 'Q', 'B' & 'L' filed the same before the NCLT on 29.09.2016 against the 'Co.', 'R', 'S', 'V', 'W', 'X', 'Y', 'Z' including 'M'. 'C' has also extended his support by giving a valid consent to 'B' authorising him to file a petition before the Tribunal.

Their interim prayers that the resolution for cessation of office of A should be suspended and the resolution proposed to be passed at the EGM to be held on 15th October 2016 should be stayed were granted. However the EGM went ahead and the implementation of the resolution was put on hold.

In the Company Petition, by way of main relief the petitioners had sought recording and reporting of cessation of office of A and removal of B as oppressive and demanded that he should be re-instated and prayed for re-opening of books of accounts and recovery of money from S for the money removed by him from the bank

account of the company by misusing his authority as MD and demanded that he should be declared unfit to be the MD of the company. His term should not be renewed. Further they wanted a declaration that M has failed in ensuring proper compliances and therefore R1 company should not engage his services. They prayed for immediate recording of transmission of shares held by D in the name of L. They want L to be brought in the place of D. Petitioners are further aggrieved by refusal to permit inspection or provide copies of minutes of all general meetings too. They complained that failure to declare dividends is also oppressive of their rights. They alleged that the valuable property of the company has been let on lease for a paltry lease rental to a related person and prayed for recovery of rent at the rate of Rs.1.25 Lakhs per month from 01st April 2015 and alleged that the renewal lease on that day without change in rentals causes losses to the company and further they state that the contract is void due to non-disclosure of director's interest. They further prayed for a declaration that V and S have failed to avoid conflict of interest and as such they have violated the statutory duties under Section 166 of the Companies Act, 2013 and therefore they are unfit to continue as directors of the company. Respondents objected that unless L is entered in the Register, he cannot join as a Petitioner. They objected to the consent given by C and also they objected that the real objective of C joining the petitioners is only to recover amount due to him with interest and proceedings under this jurisdiction cannot be converted into recovery proceedings. They justify the removal and cessation of directorships. Respondents contend that there is neither any oppression nor mismanagement and they further contend that the Petition is not at all maintainable because there is no situation that warrants winding up of the company on just and equitable grounds.

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Please register us for THE ICSI 15th ALL INDIA NATIONAL MOOT COURT COMPETITION 2017. Our composition of the team is as follows:

Sl. No.	Name (Surname, First Name & Middle Name)	Student Registration Number	Address
1			
2			

E-Mail for correspondence:

I agree that I will abide by the Rules of the Moot Court Competition 2017

Yours faithfully,

Signatures of all team members