

CASE LAW FOR MOOT COURT

Three brothers and two sisters namely 'A', 'B' & 'K' and 'S' & 'T' of a family incorporated a Company during the year 2013 with RoC, Coimbatore. The Co. was registered in the name of 'Basket Plant Pvt. Ltd.' (hereinafter referred to as 'the Co.' or 'the Company') and all the 5 persons were subscribers to the MoA & AoA hence they are the only members of the Co. and each holding 20% of the share capital of the Co. Similarly, all the 5 members were on the Board of the company and the company was formed with the main objects of carrying on plantation business hence lands were purchased by the Co. for a sum of Rs. 40 lakhs out of the total investment of Rs. 50 lakh being the contribution towards shares of Rs. 10 lakh by each member. The AoA of the Company restricts transfer of shares to outsiders unless a unanimous resolution is passed at the Board meeting. During the year 2014 the Company availed a bank loan of Rs. 50 lakhs from Indian Bank by mortgaging the lands owned by the Co. The Board of directors of the company authorised two sisters to operate the bank accounts of the Co. jointly with regard to the affairs of the company is concerned. During the year 2015, the Co. entered into a contract with another Co. 'XYZ Ltd.' for the purchase of raw materials for carrying on its business with an arbitration clause in the said agreement. Since the Co. owed a sum of Rs. 75 lakhs and the default was committed in September 2020, 'XYZ Ltd.' without invoking the arbitration clause in the agreement directly initiated IBC proceedings by filing an application U/s. 9 of IBC before NCLT, Chennai Bench in January 2021 against the Co.

The Co. during the year 2015 had appointed 'K' as the Managing Director of the company and also responsible for maintaining the statutory records and books of accounts of the company and he was solely responsible for the custody of the records of the company. The misunderstanding between the members of the Company commenced when the Co. began to make continuous loss since the year 2018 and two cheques issued by the 'S' & 'T' on behalf of the Co. got dishonoured due to insufficiency of funds resulting in the Company and all the directors against whom cheque bounce case was initiated in 2019 U/s. 138/141 of the Negotiable Instruments Act before the Magistrate Court. Further in 2020 a request was made by a shareholder 'A' for inspection of the statutory records of the Co. and a demand was also made for providing a copy of the minutes of board and general meetings. Though the inspection was allowed copies were denied and it was noticed by 'A' that some of the records are not in order hence not properly maintained as per the law and those records were kept in a branch office of the Co. instead of the registered office of the Co.

During the year 2020, an investor 'E' came forward to invest a sum of Rs. 1 Crore in the Co. on condition that he is made a shareholder of the Co. and a director of the Co. to which majority of the Board agreed except 'B' and necessary resolution in this regard was passed and forms filed with the RoC and 'E' was also inducted in the Board of the Company and shares were allotted to him.

In March 2022, 'A' and 'B' jointly filed a petition U/s. 241 of the Companies Act, 2013 before NCLT, Chennai Bench alleging various acts of oppression and mismanagement committed by the Co. and other directors including 'E' thereby challenging the very appointment of 'E' as a director of the Co. and also allotment of shares to 'E' without a unanimous resolution passed at the Board meeting or General meeting of the Co. and which also resulted in dilution of the shareholding percentage in the Co. of each promoter/shareholder from 20% to 4.8% each. Further allegations were made that the statutory records and books of accounts are not properly maintained. According to the petitioners, due to mismanagement of affairs of the Co. by the Board, the Co. suffered huge loss and all the directors had to face the cheque bounce criminal case before the Court. Since 'S' & 'T' are the cheque signing authorities for the Co. they have siphoned the funds of the Co. without the knowledge of the Board of the Co. in respect of which the records are not being provided by the Co. The Financial statements and Annual returns are always filed by the Co. with the RoC belatedly with additional fee and the AGM is conducted each year only after obtaining extension of time from the RoC. Further the Bank has initiated SARFAESI proceedings against the Co. for having committed default in repayment of loan to the Bank as the account has been declared 'NPA'. The supplier of raw materials 'XYZ Ltd.' has also initiated IBC proceedings against the Co. before NCLT, Chennai Bench which is pending admission.

Based on the above facts, the petitioners will have to substantially make out a case of Oppression and Mismanagement and the respondents will have to defend the case on various grounds.