

Karnataka High Court

Sri S N Harish vs M/S Pods Biotech Private Limited on 15 June, 2012

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1

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 15th day of June, 2012

PRESENT

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR JUSTICE B MANOHAR

Company Appeal No 1 of 2012

Between:

1. SRI S N HARISH
S/O SRI S.T. NAGARAJAIAH
AGED ABOUT 48 YEARS,
NO.1652/23, 16TH MAIN,
5TH A CROSS, BANASHANKARI
I STAGE, II BLOCK,
BANGALORE - 560 050
 2. SMT SAVITHA HARISH
W/O SRI. S.N. HARISH
AGED ABOUT 42 YEARS
NO.1652/23, 16TH MAIN,
5TH A CROSS, BANASHANKARI
I STAGE, II BLOCK,
BANGALORE - 560 050
- ... APPELLANTS

[By Sri K S Harish, Adv.]

And:

1. M/S PODS BIOTECH PRIVATE LIMITED
COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956
HAVING ITS REGD OFFICE AT
NO.325/1, 14TH MAIN ROAD,
5TH CROSS,

2

RAJMAHAL VILAS EXTENSION
SADASHIVNAGAR,
BANGALORE - 560 080

2. SRI RAMESH B GOWDA
S/O BOMMEGOWDA

AGED ABOUT 37 YEARS,
NO.325/1, 14TH MAIN ROAD,
5TH CROSS,
RAJMAHAL VILAS EXTENSION
SADASHIVNAGAR,
BANGALORE - 560 080

3. SRI B CHANDRASHEKAR
S/O B. KRISHNA MURTHY
AGED ABOUT 41 YEARS,
1ST MAIN ROAD,
INDUSTRIAL LAYOUT,
NO. 17, SHANKAR NAGAR,
BANGALORE - 560 080

4. SMT RAMYA GOWDA
W/O SRI RAMESH B GOWDA
AGED ABOUT 36 YEARS,
NO.325/1, 14TH MAIN ROAD,
5TH CROSS,
RAJMAHAL VILAS EXTENSION
SADASHIVNAGAR,
BANGALORE - 560 080

... RESPONDENTS

[By M/s Tatra legal, Advs.]

THIS APPEAL IS FILED UNDER SECTION 10F OF THE COMPANIES ACT, 1956 PRAYING TO SET ASIDE THE RELIEF GRANTED PER PARAGRAPH 22(i) OF THE ORDER DATED 11.01.2012 PASSED BY THE COMPANY LAW BOARD, ADDITIONAL PRINCIPAL BENCH, CHENNAI IN CP 10 OF 2008 AND ETC.,

THIS APPEAL, COMING ON FOR ADMISSION THIS DAY, SHYLENDRA KUMAR J., DELIVERED THE FOLLOWING:

3

JUDGMENT

This appeal under Section 10F of the Companies Act, 1956, (for short the Act) is by the petitioners in Company Petition No.10/2008, which was disposed of by the Company Law Board, Additional Principal Bench, Chennai, on 11.1.2012, a company petition which was filed under Sections 397 and 398 of the Act as also under Sections 402, 403, 406 and 237 r/w Schedule XI of the Act, impleading the company, of which the petitioners were shareholders of the 1st respondent - company and the 2nd respondent being a person to whom the affairs of the company had been entrusted by the petitioners and respondent Nos.3 and 4 in the company petition being persons, who are Directors of the company appointed by the 2nd respondent. Company petition was on the premise that the respondents 2, 3 and 4 have acted in an illegal manner; that they have indulged in changing the documents; that further shares had been allotted in their favour; that the shares of the company

allotted in the name of the petitioners were virtually reduced to minority and made non-entities in the company by ensuring that share holdings of the 1st respondent - company was even less than 1% of the issued and subscribed share capital of the company by unauthorised issue of large number of shares of the company which was done by the 2nd respondent in a fraudulent manner and therefore, had approached the Company Law Board for relief and to restore the status as the shareholders of the company and for incidental relief.

2. The Company Law Board, which examined the matter found that the 2nd respondent, while had acted in an illegal manner and in violation of the provisions of the Companies Act had allotted to himself and others shares without justification and without bona fides; that they will have to be removed from the company; that the earlier shareholding of the petitioners be restored and the company also handed back to the petitioners etc.

3. But at the same time taking note of the fact of 2nd respondent having worked for the company and having invested certain amounts, he should be suitably compensated and for valuing the compensation payable to the 2nd respondent, an auditor was appointed as Commissioner and both the parties were required to work in coordination with the Board appointed auditor to arrive the amount, which was required to be paid to the 2nd respondent, as compensation to the services provided to the company etc.

4. In the process, the Company Law Board had directed that the property owned by the petitioners has to be retained as it is; that the amount payable to the 2nd respondent on being ascertained will constitute a charge on the property, till the amount is paid and it is being aggrieved by this condition, the present appeal by the company petitioners, invoking Section 10F of the Act.

5. Appearing on behalf of the appellants submission of Sri K.S. Harish, learned counsel is that the condition imposed is most unreasonable, not justified in law, that the Company Law Board could not have enforced a condition of this nature orally, when the property in question was not of the appellants, the compensation if any, assuming that it has to be paid in favour of the 2nd respondent could have been worked out from the funds of the company and not by creating a charge on the property of the appellants.

6. We find that the Company Law Board in making such a condition had found that there was an understanding between the parties vis-à-vis the land, which was to be developed for the purpose of the business of the company and this factor weighed with the Board in imposing this condition. Even otherwise it is only the interim arrangement till the amount ascertained as payable to the 2nd respondent, is paid.

7. We do not find either there is any question of law, which is required to be framed in an appeal under Section 10F of the Act which has been decided wrongly in the order of the Company Law Board, which calls for correction or any gross injustice having occurred to the appellants to warrant interference in an appeal of this nature.

8. However, Sri Harish, learned counsel submits that the appellants are left high and dry and even in respect of valuation by the auditor if they are not really satisfied, with such valuation, as they are not left with option to object to the valuation, with the disposal of the appeal as in terms of the report of the Commissioner they will have to make payment and will not have a say in the matter as in terms of the impugned order, they will have to make payment and therefore, are pre-empted from pointing out anomalies if any in the valuation or the report and hence does warrant interference by this court.

9. It is open to the appellants to point out this aspect before the Company Law Board as and when the commissioner submits report before the Board within two months and therefore, on that occasion, the appellants will be at liberty to have their say in the matter, by pointing anomalies if any, in the report before the Company Law Board itself.

10. We do not find any need to admit this appeal only on this account and accordingly dismiss this appeal but reserving liberty to the appellants to move the Company Law Board if the occasion arises and as indicated above.

Sd/-

JUDGE Sd/-

JUDGE NG*