

IN THE GAUHATI HIGH COURT  
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH  
**SHILLONG BENCH**

W.P.(C) No. (SH) 163 of 2011

Narpat Singh  
s/o late Raghunath Singh  
resident of Mwoing Rim  
Shillong, District East Khasi  
Hills, Meghalaya.

: Petitioner

-vs-

1. The Company Law Board  
Principal Seat, New Delhi

2. Sheba Wheels Pvt. Ltd.,  
A company registered  
Under the Companies Act, 1956  
Having its registered office at  
Ziakurvilla, Bishnupur,  
Shillong, District East Khasi Hills,  
Meghalaya.

3. Satvijay Investment &  
Consultancy Services (P)  
Ltd., having its registered office at  
9/12 Lal Bazar Street,  
Mercantile Building, E Block,  
Room No. 2, 3<sup>rd</sup> Floor,  
Kolkata through Shri Vijay Kumar Chopra  
Director of the Company

4. Puma Investment (P) Ltd.,  
having its registered office at 1824  
Gali No. 2, Kailashnagar, Delhi-110032  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

5. Pwan Vinvest (P) Ltd.,  
having its registered office at  
Kirti Sadan, 3507  
Pyrallal Road, Bank Street  
Karon Bagh,  
New Delhi-110005 through  
Constituted Attorney  
Shri Vijay Kumar Chopra

6. Pratibha Finvest (P) Ltd.,  
having its registered office at 84  
Daryaganj, 3<sup>rd</sup> Floor  
Opp Cambridge School

New Delhi-110002  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

7. Urmi Computers (P) Ltd.,  
having its registered office at 84 Daryaganj  
3<sup>rd</sup> Floor Opp Cambridge School  
New Delhi-110002  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

8. Delite Fincap Services (P) Ltd  
having its registered office at 13  
bonfield Lane, 6<sup>th</sup> Floor  
Kolkata-700001  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

9. Mohit Finance & Builders (P) Ltd  
having its registered office at 13  
bonfield Lane, 6<sup>th</sup> Floor  
Kolkata-700001  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

10. Victor Trading & Agencies (P) Ltd  
having its registered office at 13  
bonfield Lane, 6<sup>th</sup> Floor  
Kolkata-700001  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

11. Dhanraj Bharatraj Properties (P) Ltd  
having its registered office at 13  
bonfield Lane, 6<sup>th</sup> Floor  
Kolkata-700001  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

12. Manish Drolia,  
s/o Shri Sita Ram Drolia  
r/o 21A Daryaganj, New Delhi-110002  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

13. MK Dugar  
s/o Sri Champa Lal Dugar  
r/o 21A Daryaganj, New Delhi-110002  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

14. Mohitkhush Commercial (India) Pvt. Ltd.,  
having its registered office at  
21A Daryaganj, New Delhi-110002  
Through Constituted Attorney

Shri Vijay Kumar Chopra

15. Doo Solvex Industries Ltd  
having its registered office at 7  
GC Avenue, Kolkata-700013 having its  
Registered office at  
21A Daryaganj, New Delhi-110002  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

16. Pushpa Chopra  
w/o Sri Vijay Kumar Chopra  
r/o 19 Kallyan Vihar  
Delhi-110009  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

17. Raahul Financial Services (P) Ltd.,  
having its registered office at  
1511/3 Wazir Nagar  
Kotla Mubarakpur  
Now Delhi Through Constituted Attorney  
Shri Vijay Kumar Chopra

18. Rajkalam Manufacturing Co (P) Ltd.,  
having its registered office at T-1  
1<sup>st</sup> Floor, Green Park Extension  
New Delhi  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

19. TWI Light Marketing (P) Ltd.,  
having its registered office at  
18/24 Shakti Nagar  
Delhi-110007  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

20. Glory Advertising & Marketing (P) Ltd  
having its registered office at Flat No. 860  
Sector 19, Pocket 3, Dwarika  
Palam, New Delhi  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

21. Om Electrade (P) Ltd  
having its registered office at Flat No. 860  
Sector 19, Pocket 3, Dwarika  
Palam, New Delhi  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

22. Sun Star Marketing (P) Ltd.,  
having its registered office at T-1  
1<sup>st</sup> Floor, Green Park Extension

New Delhi  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

23. Dazzling Financial Services (P) Ltd.,  
having its registered office at E-4/21  
1<sup>st</sup> Floor, Krishan Nagar, Delhi-110051  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

24. MMJ Investment (P) Ltd.,  
having its registered office at 200D,  
2<sup>nd</sup> Floor, Gautam Nagar  
New Delhi  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

25. PP Securities & Finlease (P) Ltd.,  
having its registered office at 200D,  
2<sup>nd</sup> Floor, Gautam Nagar  
New Delhi  
Through Constituted Attorney  
Shri Vijay Kumar Chopra

26. Neelkanth Shares (P) Ltd.,  
having its registered office at 1/9904  
Wosi-Gorak Park, Shahdara,  
Delhi through Constituted Attorney  
Shri Vijay Kumar Chopra

27. MPN Fincap (P) Ltd.,  
having its registered office at 29/46,  
Gali No. 12, Viswas Nagar,  
Delhi through Constituted Attorney  
Shri Vijay Kumar Chopra

: Respondents

BEFORE  
THE HON'BLE MR JUSTICE T VAIPHEI

For the Petitioner : Mr GS Massar, Sr Adv  
Mr K Baruah,  
Mr JM Thangkhiew,  
Ms MF Diengdoh, Advs

For the Respondents : Mr VK Jindal, Sr Adv  
Mr S Jindal, Adv  
Ms B Goyal, Adv respdt 5

Date of hearing : 16.08.2011

Date of Judgment & Order : 21.10.2011

## **JUDGMENT AND ORDER**

In this writ petition, the petitioner is questioning the legality of the proceedings arising out of Company Petition No. 45/2003 under Sections 397/398 r/w Section 402 of the Companies Act, 1956 pending before the Company Law Board, Principal Bench, Delhi.

2. Before proceeding further, the facts material for disposal of the writ petition, as pleaded by the petitioner, may be noticed. The petitioner is a resident of Shillong, Meghalaya. The respondent No. 2 is a private limited company ("the company" for short) registered under the Companies Act, 1956 ("the Act" for short) and having its registered office at Ziakurvilla, Bishnupur, Shillong, Meghalaya. According to him, he is a shareholder of the company with a holding of 2000 equity shares, the value of each share being Rs. 100/-. The shares purchased by him were registered with the Registrar of the Companies at Shillong in accordance with the provisions of the Act under registration Folio No. 48 and Certificate No. 87: he was accordingly issued a share certificate dated 27-2-2002 in his favour. As a shareholder of the company, he has a right over the company, which cannot be taken away without following the procedure laid down by law. According to him, on 17-6-2011, he was surprised to receive the letter dated 10-6-2011 from the respondent-company informing him that the shares allotted to him were being cancelled in connection with a settlement/compromise sought to be arrived at between the respondent-company and the other litigating parties in the said company petition pending before the Company Law Board (respondent

1). The petitioner thereupon collected detailed information about the pending case and was surprised to find that the case had been filed by the respondent Nos. 3 to 27 for cancellation of the shares allotted by the respondent-company in the year 2001-2002 including his shares: he was, however, not impleaded as a party-respondent in that case even though the same had been pending since 2003. He was totally unaware of the existence of the case until he received the said letter dated 10-6-2011 of respondent No. 2.

3. It is also the case of the petitioner that the respondent-company has not held any meeting nor has it taken any resolution for cancellation of the shares allotted in the year 2001-2002 which would include his shares: neither has the respondent-company taken his consent in writing or otherwise for cancellation of his shares in the year 2001-2002. It is contended by the petitioner that the manner in which the said case has been proceeded with before respondent No.1 without intimation to the shareholders, whose shares are being cancelled, give rise to an irresistible conclusion that the respondent No. 2 and the respondent Nos. 3 to 37 in the said case were hand-in-glove and are trying to take away and extinguish the legal rights of the petitioner and other shareholders without their knowledge by taking advantage of the remote location of their residence i.e. Meghalaya. It is also the contention of the petitioner that the respondent No. 1, sitting at Principal Bench at Delhi, has no territorial jurisdiction to entertain the company petition inasmuch as the respondent-company has its registered office at Shillong. The specific case of the petitioner is that the respondent-company and the remaining respondents are now proceeding to settle among themselves with respect to his shares

allotted to him in 2001-2002 without impleading him as a party-respondent even though he is a necessary party. This is how this writ petition has been filed.

4. No affidavit-in-opposition is being filed by the respondents. However, the respondents No. 3 to 27 through Mr. V.K. Jindal, the learned senior counsel, vehemently opposed the writ petition on the ground of maintainability of the writ petition. It is his submission that this Court under Article 226 of the Constitution cannot issue any writ against the Company Law Board, Principal Bench located at Delhi, and clause (2) of Article 226 is not applicable at all inasmuch as there is no whisper of statement made by the petitioner as to what part of the cause of action arose in Shillong: his having share of 2000 with the respondent-company registered at Shillong cannot per se constitute a cause of action. He maintains that the petitioner has an alternative remedy under Section 10-F of the Act as well as Section 405 of the Act to redress his grievances: having failed to exhaust the alternative statutory remedy provided for by law, the writ petition is not maintainable and is, therefore, liable to be dismissed. He places strong reliance on the following decisions of the Apex court, namely, ***Alchemist Ltd. v. State Bank of Sikkim, (2007) 11 SCC 335; Sri Ramdas Motor Transport Ltd. v. Tadi Ahinarayana Reddy, (1997) 5 SCC 446; Stridewell Leathers (P) Ltd. v. Bhankerpur Simbhaoli Beverages (P) Ltd., (1994) 1 SCC 34*** and ***Union of India v. Madras Bar Association, (2010) 11 SCC 1***, to fortify his submissions. He, therefore, strenuously urges this Court to dismiss the writ petition at the very threshold. Per contra, Mr. GS Massar, the learned senior counsel for the writ petitioner, submits that when the company is

registered at Shillong, filing of the writ petition at some other place is without jurisdiction, and the writ petition should only be filed at the place where registered office of the company is located or where the principal officers of the company reside. In other words, his contention is that it is the situs of the registered office of the company which will confer the territorial jurisdiction of the High Court under Article 226 of the Constitution. He draws support from para 15 of the decision of the Apex Court in ***Stridewell Leathers (P) Ltd. case (supra)*** and ***Union of India v. Oswal Woolen Mills Ltd., (1984) 2 SCC 646.***

5. Since the core issue presently revolves round the interpretation of Article 226(1) and (2) of the Constitution of India, it will be instructive to reproduce below these provisions:

**“226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in article 32, every High Court shall have powers throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.**

**(2) The power conferred by clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”**

6. It may be noted that Article 226(1) of the Constitution as it originally was enacted had two-fold limitations on the jurisdiction of High Courts with regard to their territorial jurisdiction. Firstly, the power to issue writs can be exercised by the High Court “throughout the territories in relation to which it exercises jurisdiction i.e. the writs



issued by court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be within those territories: it must be amenable to its jurisdiction either by residence or location within those territories. In the instant case, the petitioner is admittedly challenging the legality of the company petition entertained by the Company Law Board located at Delhi, which is not located within the territorial jurisdiction of this Court. Therefore, there can be no dispute that the case of the petitioner does not come within the purview of Article 226(1) of the Constitution, and is, therefore, maintainable. The next question for consideration is, whether this Court has the jurisdiction to entertain the writ petition under Article 226(2) of the Constitution. In other words, whether the cause of action for the writ petition, wholly or in part, arises within the jurisdiction of this Court so as to enable him to invoke Article 226(2)? The issue once again came up for consideration before the Apex Court in ***Alchemists Ltd. case*** (*supra*). In that case, the writ petitioners contended that at least a part of the cause of action arose within the territorial jurisdiction of the High Court of Punjab and Haryana on the following facts:

- (i) the appellant company has its registered and corporate office at Chandigarh;
- (ii) the appellant company carries on business at Chandigarh;
- (iii) the offer of the appellant company was accepted on 20-2-2004 and the acceptance was communicated to it at Chandigarh;
- (iv) the Chairman and Managing Director of the first respondent visited Chandigarh the bona fides of the appellant company
- (v) negotiations were held between the parties in the third week of March, 2005 at Chandigarh
- (vi) letter of revocation dated 23-2-2006 was received by the appellant company at Chandigarh. Consequences of the revocation ensued at Chandigarh by which the appellant Company is registered.

5. The Apex Court, after discussing the history of Article 226(1) and (2) of the Constitution and after reviewing a catena of its past decisions, held that the test as to whether a particular fact(s) constitutes (constitute) a cause of action, wholly or in part, will have to be judged on the touchstone of whether such fact(s) is(are) of substance and can be said to be *material, integral or essential* part of the *lis* between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered. For example, in ***Union of India v. Adani Exports Ltd., (2002) 1 SCC 567***, A filed a petition under Article 226 of the Constitution in the Gujarat High Court claiming the benefit of the Passport Scheme under the EXIM policy. The Passport was issued by Chennai Office. Entries in the Passport were made by authorities at Chennai, but none of the respondents were stationed within the State of Gujarat. Territorial jurisdiction was sought to be conferred upon the Gujarat High Court on the following set of facts: (a) A was carrying on business at Ahmedabad; (b) orders were placed from and executed at Ahmedabad; (c) credit of duty was claimed for export handled from Ahmedabad; (d) denial of benefit adversely affected the petitioner at Ahmedabad and (e) A had furnished bank guarantee and executed a bond at Ahmedabad, etc. The Apex Court held that none of the facts pleaded by A constituted a cause of action. This is what it said:

*“Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so to confer territorial jurisdiction on the court concerned.”*

6. In other words, all necessary facts must form an integral part of the cause of action. The fact which is neither material nor essential nor integral part of the cause of action would not constitute a part of the cause of action within the meaning of Clause (2) of Article 226 of the Constitution. It will be profitable to refer to the following conclusions of the Apex Court in ***Alchemists Ltd.*** (*supra*) at para 37, which succinctly explain the legal position:

*“37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a **material, essential, or integral** part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a “part of the cause of action, nothing less than that.”*

7. In the case at hand, the only ground upon which the petitioner seeks to confer territorial jurisdiction upon this Court to entertain this writ petition directed against the proceedings in question pending before the Company Law in the Principal Bench, Delhi is that the respondent-company is a company registered with the Registrar of Companies at Shillong, and has its registered office at Shillong. What is the subject-matter of the case, viz. Company Petition No. 45 of 2003 filed by the respondents No. 2 to 27 pending before the Company Law Board at Delhi? The subject-matter of the Company Petition, as pleaded by the petitioner himself at paragraph 7 of the writ petition, is the prayer of the said respondents for cancellation of shares allotted by the respondent-company in the year 2001-02, which are alleged to have included his own shares. In other words, the petitioner desires to question in this writ petition the tenability of the prayer of the respondent-company made before the Company Law Board, Delhi for

cancellation of those shares. The expression “cause of action” has not been defined in the Constitution or the code of Civil Procedure. It may, however, be described as a bundle of essential facts, which is necessary for the plaintiff to prove for the right to judgment. Failure to prove such facts would, conversely, give the defendant a right to judgment in his favour. In other words, whether the facts projected by the respondent-company in their petition can constitute a material, essential or integral part of the cause of action? In my opinion, the mere fact that the respondent-company was registered, or has its registered office, at Shillong, is not decisive, and has absolutely no bearing with the *lis* or the dispute involved in the case so as to confer territorial jurisdiction upon Gauhati High Court. In other words having a registered office of the respondent-company at Shillong has not, even remotely, touched upon the controversy involved in the company petition pending before the Principal Bench of Company Law Board at Delhi: the bundle of facts to be proved by the respondent-company before the Company Law Board at Delhi for the right to judgment is not about the situs of their registered office. On the contrary, this writ petition is squarely covered by the decision of the Apex Court in ***Adani Exports Ltd. case*** (*supra*). Therefore, in my judgment, the mere fact that the respondent No. 2 has its registered office at Shillong or carries on its business at Shillong has absolutely no bearing on whether the shares allotted by it in the year 2001-02, is legal or not is rather the cause of action for the company petition such an issue cannot, by any stretch of imagination, be held to constitute a material, essential or integral part of the cause of action: they are as different as chalk and cheese. In the view that I have taken, I have no alternative but to hold that no part of the cause of action of the

company petition pending before the Company Law Board at Delhi lies within the territorial jurisdiction of this Court. As this writ petition is being dismissed on the ground of its non-maintainability alone, I refrain from deciding the remaining issues raised by the petitioner.

8. For what has been stated in the foregoing, this writ petition is not maintainable for want of territorial jurisdiction. Consequently, the writ petition is dismissed. It shall, however, be open to the petitioner to approach the competent and jurisdictional court to ventilate his grievance. The interim order passed earlier is accordingly vacated. However, there shall be no order as to costs.

JUDGE

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