**Mika Singh versus Orange Ventures Limited**

Orange Ventures Limited (OVL) was incorporated at Kolkata on November 29, 1964 as a private limited company. The company is engaged in the business of manufacturing and processing tea leaves from the tea estates of Siliguri. The company was started by three group of shareholders- Pestonji family, Singh family and the Mukherjee family. In the beginning, the company had an authorised, issued and paid up capital of INR 30 lakh with Pestonjis and Singhs holding 35% of the equity shares each and 30% of the equity shares by the Mukherjees through their respective private companies. The promoters entered into a shareholders agreement dated December 12, 1964. Some of the key terms of the shareholders agreement were as follows:

* Any further issue of shares of the company shall be first offered to the three promoter groups in equal parts. If the three promoter groups were unable to subscribe to the shares of the company, the shares shall be offered to third parties.
* Each promoter group shall continue to have at least one director on the board of the company in perpetuity. No decision of the board of directors shall be valid unless nominee of each promoter group is present in the board meeting.
* The person at the helm of affairs of the company shall always be a person from one of the three promoter groups.

This shareholders agreement was never incorporated into the articles of association of the company. However, Orange Ventures Limited is a party to this shareholders agreement.

With the growth and expansion of the business, the company was converted to a public company in 1999 and listed on National Stock Exchange in 2010. After various rounds of fund raising and private placements, as on date, the fully paid up share capital of the company is INR 1000 crore and the shareholding pattern of the company is as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sl No | Name of Shareholder | Number of Equity Shares | Number of Preference Shares | Director/ Nominee Director |
|  | Monty Singh | 200000 | 100000 | No |
|  | Mika Singh | 300000 | 50000 | Yes |
|  | Bunty Singh | 400000 | 50000 | No |
|  | Avani Pestonji | 1200000 | 250000 | Yes |
|  | Rustom Pestonji | 800000 | 150000 | No |
|  | Rita Mukherjee | 1300000 | 100000 | Yes |
|  | Debi Mukherjee | 800000 | 450000 | No |
|  | HighRise Fund LLC | 900000 | 1250000 | Yes, 1 |
|  | Angel Venture Fund | 1100000 | 1350000 | Yes, 1 |
|  | SIDNI Bank Ltd. | 800000 | 1250000 | Yes, 1 |
|  | Public | 2200000 |  | Not Applicable |

Till August 2015, Avani Pestonji was the Chairman and Managing Director of the company. She is the matriarch of the Pestonji family who took reins of the business on the untimely death of her husband Dwarkadas Pestonji in 2001. Avani Pestonji was responsible for introducing special techniques to reduce wastage in leaf picking, getting the first mover advantage by introducing green tea and white tea in India and exporting the teas at competitive rates to Europe. Avani Pestonji spearheaded the company from a INR 5 crore company to a INR 100 crore company.

In the year 2016, Avani expressed her interest to retire from the business owing to her growing age and failing health. After various discussions on succession, it was decided that with effect from January 2018, Mika Singh shall succeed Avani on the designation of Chief Executive Officer. The company would not have any managing director and Avani shall be Chairman Emeritus.

Mika Singh is a dynamic young businessman who was groomed by his father Harvansh Singh. He has shown excellent risk taking abilities and managerial abilities in the shipping empire of the Singh family.

Mika Singh was very excited and rolled out ambitious plans for the expansion of the company. He planned to close down various processing facilities of the company which were causing a revenue loss to the company. One of these facilities was the first processing facility established by Dwarkadas Pestonji and which was considered a lucky charm by most founders and old employees of the company. Mika Singh also proposed to shift the registered office of the company and all its business operations to Mumbai to capture the growing urban tea drinking market. One of the other reasons Mika Singh wanted to shift the registered office of the company was to reduce the indirect control Avani Pestonji maintained over all the affairs of the company. Mika Singh was frustrated to note that all the key managerial employees and investors were in direct contact with Avani. Not a leaf could move in the company courtyard without Avani getting to know about it.

Mika Singh realised that Avani Pestonji was acting as a super board to see that her wishes are carried out by the board of directors of the company. She appointed and removed key managerial personnel of the company as per her whims and fancies and based on who was ready to tow the line. In 2014 the company acquired the British Tea Company at a valuation 28% its original price only to take revenge. The British Tea Company had refused to give franchise of its English Breakfast tea to OVL calling it a ‘colonial company’ in 2010. The merger had led to financial loss of various manufacturing facilities of the company in Europe. When Mika had proposed to merge all the manufacturing facilities in Europe with its now subsidiary British Tea Company to restructure the loss, Avani Pestonji had stalled the merger and disallowed restructuring of the business in Europe. Avani Pestonji had also awarded many distribution contracts at company margins 20% lower than other distributors to her son in law.

Meanwhile, Mika Singh decided to showcase the company and its products all over the world by participating in road shows in Europe, South America and Africa. He decided to travel to these places and remain out of the country between January 20, 2018 to February 25, 2018.

On January 20, 2018, Avani Pestonji convened a meeting of the board of directors of the company. The board unanimously passed a resolution to remove Mika Singh from the post of CEO of the company. The board further proposed to convene an extra ordinary general meeting on February 25, 2018. The agenda of the EGM shall be as follows:

* Removal of Mika Singh from the board of the company
* Approval of allotment of 20,00,000 sweat equity shares to Avani Pestonji in lieu of her contribution to the growth of the business of the company which constitutes ‘know how’

On hearing this news, Mika Singh approached his advocate and filed a petition of oppression and mismanagement on Orange Ventures Limited, Avani Pestonji and other directors of the company. The matter was mentioned before Kolkata bench of National Company Law Tribunal on February 20, 2018. It was pleaded that the extra ordinary general meeting of the company was being staged in oppression of the minority shareholder group of Singh family and that the company should not be allowed to conduct the extra ordinary general meeting till final orders in the matter were passed. The Tribunal disallowed the relief.

The extra ordinary general meeting was held and all proposed resolutions were successfully passed with appropriate majority. When information related to the resolutions passed by shareholders was provided to the stock exchange, the stock of the company nosedived by 8.9% with the shareholders losing approximately INR 890 crore in market capitalization.

On the next day of the extra ordinary general meeting, Mika Singh (Petitioner) made additional submissions that the entire extra ordinary general meeting and all resolutions passed therein are also acts of oppression and mismanagement. The issue of sweat equity shares to Avani Pestonji is not as per guidelines of Companies Act, 2013 and SEBI regulations. The advocate of Avani Pestonji has made submissions that the resolutions were passed in the interest of the company through a validly convened EGM having valid quorum. Issue of sweat equity shares was made on the basis of fair valuation of shares and her contribution is ‘know how’. Mika Singh has also filed a class action suit against the company owing to the grave loss faced by the company on the stock market.

The petitions filed by Mika Singh were dismissed by National Company Law Tribunal on the grounds of maintainability. Mika Singh has now approached the National Company Law Appellate Tribunal (NCLAT) with an appeal on the oppression and mismanagement petition as well as the class action suit. Both the petitions are being heard together by NCLAT.

**ISSUES RAISED BY PETITIONER**

1. Maintainability of the petitions. Assuming but not conceding that petitioner does not meet appropriate threshold limits prescribed, appropriate pleadings for NCLAT to still hear the petition
2. Irregular allotment of sweat equity shares to Avani Pestonji
3. Oppression and mismanagement in the affairs of OVL raised from line 45 to 61 of this problem and validity of business conducted in EGM.
4. Submissions on class action suit

**ISSUES RAISED/DEFENDED BY RESPONDENT**

1. Non-maintainability of the petition
2. Validity of allotment of sweat equity shares to Avani Pestonji
3. Defence to Oppression and mismanagement in the affairs of OVL raised from line 45 to 61 of this problem and validity of business conducted in EGM.
4. Defence of class action suit