

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.40101 of 2015

Rakesh Sheth

... Petitioner

vs.

1.The Registrar of Companies,
Shastri Bhawan,
No.26, 2nd Floor,
Haddows Road, Chennai-6.

2.M/s.K.G.S.Construction Ltd.,
rep. by its Managing Director. ... Respondents.

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the first respondent to dispose of the petitioner's complaint dated 23.3.2015.

For Petitioner : Mr.Nithyaesh

For Respondents : Mr.V.Venkatesan,
SCGSC, for R.1

ORDER

The petitioner has come up with the present writ petition for a mandamus, directing the first respondent to dispose of his representation dated 23.3.2015.

2. The case of the petitioner, in nutshell, is set out hereunder:-

(a) M/s.KGS Constructions Ltd., was earlier known as M/s.Milestone Shelters (P) Ltd., with the petitioner and his wife being its promoters since 2006. The said firm was initially run by the petitioner and his family members. As the Managing Director of M/s.Milestone Shelters, the petitioner performed certain works for the Directors of M/s.KGS Developers Ltd. for their project 'Vridhhi'. At that time, one Gigi George, Kumaran and P.V.Shanmugam evinced interest in investing M/s.Milestone Shelters. They have also made an offer to the petitioner to collaborate with them and M/s.Reliance Capital Ltd. A lot of

negotiations took place and finally, the petitioner agreed for the same. Thereafter, in the year 2010, the name of M/s.Milestone Shelters Pvt. Ltd., was changed as M/s.KGS Milestone Shelters Pvt Ltd. and thereafter, again changed as M/s.KGS Milestone Constructions Ltd.

(b) In March and April, 2010, the said Gigi George, Kumaran and P.V.Shanmugam purchased 42.6% stake in M/s.KGS Constructions Ltd., while M/s.Reliance Capital Ltd acquired 14.90% stake in M/s.KGS Constructions Ltd. The petitioner and his wife held the remaining 42.50% shares. The said Gigi George, Kumaran and P.V.Shanmugam negotiated with the petitioner and his wife for 42.50% shares held by them in order to take over M/s.KGS Constructions Ltd. completely. In this regard, various deliberations and negotiations took place and finally, a memorandum of understanding came to be executed between the petitioner and his wife on the one hand and the said Gigi George, Kumaran and P.V.Shanmugam and M/s.KGS Developers on the other hand on 25.1.2012, 31.1.2012 and finally on 29.11.2012. As per these agreements, the petitioner and his wife have to resign the post of members of the Board and to transfer their entire shareholdings to the said Gigi George, Kumaran and P.V.Shanmugam.

(c) Pursuant to the said memorandum of understanding, the petitioner and his wife resigned from the Board, but still they are very much shareholders of M/s.KGS Constructions Ltd., holding 42.50% of shares. The said P.V.Shanmugam became the Managing Director of M/s.KGS Constructions Ltd., after the petitioner resigned his post in pursuance of the memorandum of understanding dated 25.1.2012. On 16.2.2012, an extraordinary general meeting of the company was purportedly held at the registered office of M/s.KGS Constructions Ltd., in which meeting a special resolution was allegedly passed, wherein the name of M/s.KGS Constructions Ltd., was changed from M/s.KGS Milestone Constructions Ltd. to M/s.KGS Constructions Ltd. Accordingly, Form 23 was filed by the company before the first respondent. The special resolution requires the consent of 75 percent of shareholders and therefore, the consent of the petitioner and his wife was absolutely necessary, in case the special resolution is to be passed. But, without their consent, Form 23 was verified and digitally signed by the said Gigi George and certified by the Company Secretary. The attachment along with Form 23 included the consent letters of the shareholders to hold the EGM on 16.2.2012. These letters were dated 13.2.2012 and includes the alleged consent letters of both the petitioner and his wife. But, neither the petitioner nor his wife had signed such a consent letter and the same has been certified and uploaded along with Form 23, without their consent. In view of the same, the petitioner sent a representation dated 23.3.2015 to the first respondent. But,

till date, said representation was not considered. Hence, the present petition.

3. Heard the learned counsel appearing for the petitioner and the learned Senior Central Government Standing Counsel, who has taken notice on behalf of the first respondent.

4. Considering the factual aspects of this case, this Court directs the first respondent to consider the representation of the petitioner dated 23.3.2015 and pass appropriate orders on merits and in accordance with law, by affording an opportunity of personal hearing to the petitioner as well as to the second respondent, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any opinion with regard to the claim made by the petitioner and it is for the first respondent to consider the claim of the petitioner strictly on merits and in accordance with law. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar of Companies,
Shastri Bhawan,
No.26, 2nd Floor,
Haddows Road, Chennai-6.

+1cc to Mr.V.Venkatesan, Advocate, S.R.No.6191

sai(CO)
srg(17/02/2016)

W.P.No.40101 of 2015

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