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**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**CMA No.680 of 2015**

JUDGMENT::

This appeal is filed against the order dated 19-08-2015 passed in IA No.1172 of 2015 in OS No.633 of 2015 by the Special Sessions Judge for SC & ST (POA) Act, 1989-cum-VII Addl. District & Sessions Judge, Ranga Reddy District at LB Nagar.

2. Appellants are plaintiffs and respondents are defendants in the suit OS No.633 of 2015. Appellants filed the suit seeking the relief of perpetual injunction restraining the respondents 2 to 9 from interfering with the management and conduct of the business of Gagan Aerospace Limited-1st plaintiff (for short, "Company") by falsely representing themselves as additional Directors before any authority and to direct the defendants to file necessary forms with Registrar of Companies removing their names as additional Directors of the Company. Interlocutory application filed therein by the plaintiffs under Order 39, Rule 1 and 2 CPC

sought for interim injunction, pending adjudication of the suit, restraining defendants- respondents 2 to 9 herein from interfering with the management and conduct of the business of the Company by representing themselves as additional Directors of the Company. By the order impugned in this appeal, the Court below, relying on Section 10 of the Companies Act, 1956, (for short, "the Companies Act") dismissed the application observing that Section 10 GB of the Companies Act clearly demarcated that the Civil Court has no jurisdiction to adjudicate upon the disputes raised by the plaintiffs. For convenience sake, the parties will be referred to, as they were arrayed in the suit.

3. Facts of the case, briefly stated are:- That the Company was incorporated in the year 2008 under the Companies Act and subsequently converted into a public limited Company on 16-12-2011 and has diversified business activities. That 2nd plaintiff is one of the original promoters, subscriber of memorandum of association and articles of association of the Company. That 2nd plaintiff has been first director of the Company and is presently its Chairman and was instrumental in incorporation of the Company. He is a

technocrat and has wide experience in dealing with defence equipment and space equipment in India and has been instrumental in getting business contracts for the Company.

4. That 1st defendant acted as Chairman of the Company

for more than six years since 2008. That 1st defendant's wife, Smt. Anantha Lakshmi Pavuluri, was a director of the Company and was liable to retire by rotation at the last Annual General Meeting (AGM) which must have been held on or before 30th September, 2014 for the Financial Year 2013-14, but the 1st defendant who was responsible for convening and conducting the said AGM failed to do so. That consequently, by operation of law, the wife of the 1st defendant ceased to be a director of the Company and vacated office. That while the matters thus stood, the 1st defendant, misusing his digital signature as director of the Company, uploaded fake and fabricated resolutions of a purported Board Meeting dated 09-05-2015 in the web portal of Ministry of Corporate Affairs. It is stated that on the said date no meeting was, in fact, held due to serious

disagreement amongst the Directors of the Company. That in the minutes allegedly fabricated and uploaded by the 1st defendant, it was shown as if eight new additional Directors, who are defendants 2 to 9 have been appointed. According to the plaintiffs, these additional Directors 2 to 9 are strangers and henchmen of 1st defendant and they have been appointed with oblique motives and sinister design. That their appointment itself is void as there is no mention of their appointment in any of the notices or agenda of the Board meetings nor were they invited to be the Directors of the Company. That the plaintiffs came to know of their appointment only from a summary statement of the Directors, which was available in the web portal of Ministry of Corporate Affairs. That by 09-05-2015, the 1st defendant's wife Smt. Ananta Lakshmi Pavalluri had already vacated office by operation of law and the plaintiffs 2 & 4, who are legitimate Directors of the Company, did not participate in any such meeting, therefore, the alleged meeting at which 1st defendant purportedly claiming to have appointed defendants 2 to 9 was a meeting for himself. That the meeting at which only 1st defendant was present is no

meeting at all in the eye of law, as a necessary corollary, any business transacted therein is null and void and, therefore, the appointment of defendants 2 to 9 is patently illegal and under those circumstances sought for the relief above noted.

5. The plea of the defendants is that 1st defendant who was the first director and chairman of the Company is an eminent technocrat turned industrialist and is considered as one of the most respected figures in the defence and aerospace industries in India and abroad and is also a pioneer in public private partnership in defence and aerospace industries in India. That 1st defendant co-founded the Company with 2nd plaintiff by giving him equal share holding in the Company and also offered directorships to him and also to his wife 4th plaintiff. That the Company has availed credit facilities and bank guarantees to the tune of 89 crores and to secure the same, the 1st defendant has furnished collateral securities and corporate guarantees to the tune of Rs.255.13 crores and the 2nd plaintiff who claims to have an equal partner holding of 50% of the paid up share capital of the Company has not offered any of his properties as collateral security to the bank, but time and again

promised that he will bring his share of collateral securities on an equal proportion as that of the 1st defendant, but failed to do so. That the 2nd plaintiff placed purchase orders for the Company from Zetatek Industries Limited, a Company owned and controlled by the 2nd plaintiff and his family members for supply of certain components and paid huge amounts as advance upfront, but it was noticed by the 1st defendant that the 2<sup>nd</sup> plaintiff was supplying sub-standard and defective components against various orders and on pointing out the defects, the 2nd plaintiff promised to return the amounts, but has not kept his words. That after noticing the mis-deeds of the 2nd plaintiff, the 1st defendant assumed complete control over the affairs of the Company and after that authorization to operate the bank account of the Company was stripped, the 2nd plaintiff became suffocated and in order to vent his frustration, began to create hurdles in the affairs of the Company. That the 1st defendant enquired from the 2nd plaintiff to convene the Board meeting on 09-05-2015, to which the 2nd plaintiff also sent a notice convening the Board meeting of the Company on 09-05-2015, but ignoring the

notice of the 2<sup>nd</sup> plaintiff, the 1<sup>st</sup> defendant also issued notice convening the Board meeting on 09-05-2015. That on the relevant date, both the 2<sup>nd</sup> and 4<sup>th</sup> plaintiffs were present and made an attempt to disrupt the meeting but, after realizing that they will not be successful in their sinister attempts, abruptly left the venue, and the 1<sup>st</sup> defendant continued the meeting and completed the agenda and other items of business. That as the Board of the Company felt that the Company has bright future, as the Government of India is making serious efforts to encourage the domestic industry in the defence sector, it was proposed to infuse fresh ideas, talent and to achieve the desired goals of the Company, defendants 2 to 9 were co-opted into the Board of the Company. That the meeting held on 09-05-2015 was properly convened, legally constituted and the business was validly transacted and, therefore, the appointment of defendants 2 to 9 is valid and binding not only on the Company but also on the plaintiffs 2 and 4.

6. That the 2<sup>nd</sup> plaintiff without any authority convened Board meeting of the Company on 18-06-2015, in spite of the

letter dated 12-06-2015 of the 1st defendant not to conduct any such meeting without the consent of the 1st defendant, passed certain resolutions including declaring himself as Chairman of the Company, changing the authorization of the bank account of the Company from sole signatory i.e. 1st defendant to joint signatories i.e. 1st defendant and 2nd plaintiff. That the entire suit is premised upon a deemed vacation of office by the wife of the 1st defendant, absence of quorum and agenda constitutes series of acts. That even otherwise the substance of the dispute relates to matters of interpretation of Companies Act and the consideration of rights and obligations specifically provided under the said Act, the civil Court has no jurisdiction and the Court below has rightly dismissed the application.

7. Sri S. Ravi, learned senior counsel appearing for the plaintiffs contended that there is no express bar on the jurisdiction of the civil Court to entertain the suit, as the plaintiffs can elect either of the forums available under the common law or statutory law and the statutory law does not stand in the way of civil Court granting the relief. It is further contended that the relief sought in the suit is with respect to

the appointment of defendants 2 to 9 who were purportedly appointed without any quorum, without any notice and agenda as being illegal and bad and other acts of the 1st defendant withdrawing the powers of the 2nd plaintiff to operate the bank account of the Company and to deal with the affairs of the Company are largely in the realm of contractual rights and obligations and does not appertain to the rights and obligations stemming only from the Companies Act, the Court below erred in ruling against its own jurisdiction. Learned counsel further contended that defendants 2 to 9 who were illegally appointed as Directors of the Company, do not have any stake in the Company and they are brought in only to bulldoze the plaintiffs, and if they are not enjoined permanently and allowed to continue as such, the plaintiffs will suffer irreparable loss and injury. Reliance is placed by the learned senior counsel on the decisions in ***AVANTHI EXPLOSIVES PVT. LTD. vs. PRINCIPAL SUBORDINATE JUDGE, TIRUPATHI,***<sup>[1]</sup> ***TEJ PRAKSH S. DANGI vs. CORAMANDAL PHARMACEUTICALS***<sup>[2]</sup>, ***SHANTI PRASAD JAIN vs.***

**KALINGA TUBES LIMITED<sup>[3]</sup> HANUMAN PRASAD BAGRI**

**vs. BAGRESS CEREALS PVT. LTD.<sup>[4]</sup>**

8. Sri S. Niranjan Reddy, learned counsel for the respondents-defendants submits that the substance of dispute relates to appointment of defendants 2 to 9 and purported lack of quorum at the meeting on 09-05-2015, the date on which defendants 2 to 9 inducted as Directors of the Company are series of acts to invoke the jurisdiction.

Learned counsel further submits that from the scheme of the Companies Act, the appointment of Directors, their working and removal etc., are provided for by the Companies Act itself, jurisdiction of the civil Court is impliedly barred and, therefore, the Court below rightly observed that it has no jurisdiction to adjudicate upon the disputes, but only by the Court under the Companies Act. In support of his contentions, learned counsel relied on the decisions in

**PREMIERE AUTOMOBILES LIMITED vs. KAMLESHKAR**

**SHANTARAM WADKE OF BOMBAY<sup>[5]</sup>, K.VENKATA RAO**

**vs. ROCKWOOL (INDIA)<sup>[6]</sup> & KHETAN INDUSTRIES PVT.**

**LTD. vs. MANJU RAVINDRAPASAD KHETAN<sup>[7]</sup>.**

9 . N o w   t h e   p o i n t s   t h a t  
a p p e a l   a r e : -

1 . W h e t h e r   t h e   c i v i l  
a d j u d i c a t e   u p o n   t h e  
i n s t a n t   i n t e r l o c u t o r  
o f f s h o o t   o f   t h e   s u i t

2 . W h e t h e r   d e f e n d a n t s  
a d d i t i o n a l   D i r e c t o r s  
p e r m a n e n t l y o m n j i u n t e t r e  
m a n a g e m e n t   a n d   a f f a

3 . W h e t h e r   t h e   d e f e n d a  
n e c e s s a r y   F o r m s   w  
C o m p a n i e s   r e m o v i n g  
D i r e c t o r s   o f   t h e   C o m

**P O I N T   N o 1 :**

10 S e c t i o n   9   o f   C o d e   o f  
j u r i s d i c t i o n   o f   C c o i w r i t l s C s  
j u r i s d i c t i o n   t o   t r y   a l l  
o f   w h i c h   t h e i r   c o g n i z a n  
b a r r e d .

11.        I n   d e a l i n g   w i t h   t h  
C o u r t ' s   j u r i s d i c t i o n   t o  
n e c e s s a r y   t h a t   e v e r y   p  
f a v o u r   o f   t h e   j u r T i h s e d i e x t i c

j u r i s d i c t i o n   o f   a   c i v i l  
s h o u l d   n o t   b e   r e a d i l y   i  
c o n t a i n s   a n   e x p r e s s   p r e  
n e c e s s a r y   a n d   i n e v i t a b l e  
The general rule, however is, that the presumption would be made in favour of the existence of a right to sue in a civil Court, the exclusion of the same being an exception. (see **Secretary of State vs. Mask & Company**) (Privy Council, 1938 AIR (Madras) 608).

12.      The Apex Court devised a test for determination of the exclusion of the jurisdiction of Civil courts. It was stated first the legislative intent is to be determined to exclude the jurisdiction “either explicitly, or by necessary implication”. This means that the Court must first try to determine the precise reason for the exclusion of the civil Court’s jurisdiction and whether it is justified. Once the Court satisfies itself of the same, the Court needs to determine whether the statute, which bars such jurisdiction provides for a suitable alternate remedy. An alternate remedy in this respect must be capable of performing the functions that would have been performed by the civil court in the absence of such exclusion, and must be empowered to pass any order which the civil Court in like circumstances would

have passed. In the absence of such alternate mechanism, the jurisdiction of the civil Court cannot be excluded. (see ***State of AP vs. Manjeti Laxmi Kanth Rao*** (2000 (3) Supreme 66)).

13. In ***Shanti Prasad Jain's case*** (3 *supra*), the Supreme Court explained the nature of jurisdiction under Sections 397 and 398 of the Companies Act. In that case it was held by the Supreme Court that the acts complained of must form a series or a chain of acts, whereby the petitioners have to demonstrate that using the majority, the shareholders of one group oppresses the other group continuing upto the date of the petition in order to invoke the jurisdiction of the Company Law Board.

14. In ***Hanuman Prasad Bagri's case*** (4 *supra*), the Apex Court held that in order to grant relief under Sections 397 (oppression of the members) and 398 (mismanagement or apprehension of mismanagement of the affairs of the Company) of the Companies Act, the petitioner should make out a case for winding up of the company on just and equitable ground and illegal termination of the directorship of the petitioner was not such a ground to justify winding up of the company and accordingly held that appropriate remedy for termination of directorship would be by way of a Company suit.

15. In view of the law laid down in ***Shanti Prasad Jain's case*** (3 *supra*) & ***Hanuman Prasad Bagri's case*** (4

***supra***) the facts alleged in the petition, in the present case, does not constitute cause of action for making application under Section 397 and 398 of the Companies Act and the rightly the application filed by the plaintiffs was withdrawn.

16. In ***Venkat Rao's case*** (6 *supra*), (*per S.B. Sinha, CJ, as his Lordship then was*) the Full Bench of this Court though, did not go into the question as to whether the jurisdiction of the civil Court is ousted or not, but held that a statutory right or a statutory disqualification created under a special statute would leave no manner of doubt that an application in relation thereto would lie before a Company Court .

17. In ***Khetan Industries Private Limited's case*** (7 *supra*), Bombay High Court at paras 7, 8 and 9 held thus:

“7. So far as the jurisdiction of the Civil Court to entertain a suit for removal of the directors of a limited company is concerned, it may be observed that Part VI of the Companies Act contains detailed provisions for the management and administration of companies. Chapter II thereof deals with constitution of the Board of Directors, disqualification of directors, vacation of office by directors and matters connected therewith. [Section 283](#) deals with the vacation of office by directors. [Section 284](#) deals with the removal of directors. The procedure for removal of directors is laid down in the said section. From a careful perusal of the scheme of the [Companies Act](#), particularly Chapter II of Part VI thereof, it is clear that the appointment of directors, their working, their removal etc. are all provided for by the [Companies Act](#) itself....”.

“8. The rule in *Foss v. Harbottle* (1843) 2 Hare 461 applies in such a case. It also does not fall in any of the known exceptions to the above rule viz., an act which is *ultra vires* the company or illegal, an act which constitutes a fraud against the company and a resolution which requires a qualified majority but has been passed by a simple majority. (See

Edwards v. Halliwell (1950) 2 All ER 1064 (CA) Moreover, the right to appoint and/or remove the directors of a Company being a creature of the [Companies Act](#) which itself provides a machinery for the enforcement of the said right, the civil court's jurisdiction is impliedly barred.

9. In such a situation, it has to be held that the civil Court should not interfere. In other words such disputes are outside the jurisdiction of the civil Court....”

18. Section 10GB of the Companies Act reads is thus:

“Section 10GB: Civil Court not to have jurisdiction—(1) No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force.”

“10FB. Constitution of National Company Law Tribunal.- The Central Government shall, by notification in the Official Gazette, constitute a Tribunal to be known as the National Company Law Tribunal to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.”

19. A reading of the above provisions, it makes clear that Section 10FB of the Companies Act provides for constitution of the National Company Law Tribunal and Section 10GB states that no civil Court shall have a jurisdiction to entertain any suit or proceedings in respect of any matter which the Tribunal or the appellate Tribunal is empowered to determine by, or under

the Companies Act, or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Companies act or any other law for the time being in force. The “Tribunal” and the “Appellate Tribunal” referred to in Section 10GB are National Company Law Tribunal that is to be constituted under Section 10FB and the Appellate Tribunal that is to be constituted under Section 10FQ, which according to the learned counsel for the plaintiffs are yet to be constituted.

20. Section 10 of the Companies Act is as follows :-

"10 (1) The Court having jurisdiction under this Act shall be-(a) the High Court having jurisdiction in relation to the place at which the registered office of the Company concerned is situate except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to the High Court in pursuance of sub-section (2); and (b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of Companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred-

(a) in respect of Companies generally, by [sections 237, 391, 394, 395 and 397 to 407](#), both inclusive; (b) in respect of Companies with a paid-up share capital of not less than one lakh of rupees, by part VII ([sections 425 to 560](#)) and the provisions of this Act relating to the winding up of Companies.”

(3) For the purpose of jurisdiction to wind up Companies, the expression "registered office" means the place, which has longest been the registered office of the Company during the six months immediately preceding the

presentation of the petition for winding up".

21. Under Section 2 (11) of the Companies Act the term 'the Court' is defined to mean as follows:-

"2(11) 'the Court' means,-

(a) with respect to any relating to a Company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that Company, as provided in [section 10](#);

(b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence"

22. When both these sections are read together it is apparent that whenever in the Companies Act the term 'the Court' is used, the Court which is referred to, normally in its generic meaning, it is to be construed as the Court as set out in Section 10 of the Act. When under the Companies Act, if a section refers to an application to a Court on any matter relating to a Company, other than an offence under the Companies Act, Section 10 provides that the Court having jurisdiction under the Act shall be the High Court, except to the extent to which such jurisdiction is conferred on any District Court by a Notification issued by the Central Government under Section 10 (2). So whenever there is any reference under the Companies Act to any proceedings before a Court under that Act, (other than proceedings relating to an offence under the Act) the Court which will have jurisdiction shall be the High Court or, if there is requisite Notification, the District Court.

23. The main contention of the plaintiffs is that the appointment of defendants 2 to 9 as additional Directors of the Company is illegal and is without any authority of law and the

suit is filed praying i) to grant permanent injunction restraining the defendants 2 to 9 from interfering with the management and conduct of the business of 1<sup>st</sup> plaintiff-Company by falsely representing themselves as additional directors before any authority; ii) to direct the defendants to file necessary Forms with Registrar of Companies removing their names as additional Directors of the 1<sup>st</sup> plaintiff-Company & iii) to direct the defendants to pay costs of the suit.

24. The issue in ***Avanthi Explosives's case (1 supra)*** relates to jurisdiction of the civil Court to entertain a civil suit involving the question as to the disqualification of the director of a company, in the context of Sections 2 (11), 10, 283 and 299 of the Companies Act and Section 9 of Code of Civil Procedure. After observing that Sections 283 (1) (i) and 299 of the Companies Act are mainly a re-enactment of the obligations of a trustee, arising out of the common law, the learned Judge did not accept the contention canvassed that the alleged disqualification of a director of a company cannot be subject matter of a civil suit. Hence, that case is distinguishable and it is not applicable to the facts of the present case.

25. The facts of the case in ***Tej Prakash S. Dangi's case***

**(2 supra)** are also distinguishable, with the facts of the case on hand, as the facts therein relates to forfeiture of shares by the Company which was provided only in the articles of association of the Company and there was no provision in the Companies Act for a Court to entertain a petition regarding forfeiture of shares made under the articles of association.

26. In ***Khetan Industries Private Limited's case*** (7 supra), Bombay High Court in similar set of facts held that the right to appoint and/or remove the directors of a Company being a creature of the Companies Act, which itself provides a machinery for the enforcement of the said right, civil Court's jurisdiction is impliedly barred.

27. In ***Premier Automobiles case*** (5 supra), the Apex Court while interpreting the provisions of the Industrial Disputes Act laid down that civil Court has no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act and the civil Court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone.

28. In the instant case, if bundle of facts pleaded are

analyzed, it relates to appointment of 8 directors who are defendants 2 to 9 and appellant-plaintiff seeks restraint order against them. The facts pleaded in this case are almost identical to the *English case* laws relied on by Bombay High Court in ***Khetan Industries Private Limited*** (7 supra) in ***Edwards v. Halliwell*** (1950) 2 All ER 1064 (CA) & ***Foss v. Harbottle*** (1843) 2 Hare 461.

29. From the pleadings of both the parties it is clear that both the parties are claiming to be Chairman of the Company. While the 1<sup>st</sup> defendant stripped of the power of the 2<sup>nd</sup> plaintiff to operate the bank account of the Company, the 2<sup>nd</sup> plaintiff assumed power and declared himself to be Chairman and changed the authorization of the bank account of the Company from single signatory to joint signatories. Serious wrangling is going on between the two co-founders of the Company for toppling the affairs of the Company. There are also allegations with regard to the conduct of the business by the 1<sup>st</sup> defendant that the 2<sup>nd</sup> plaintiff is not contributing the matching funds required to run the Company and there are financial imbalances with regard to monies invested for the growth of the Company.

30. The facts also relate to the right of the directors

(defendants 2 to 9) of the Company and their continuance as a directors of a company and the consequential management of the company through reconstitution of the Board of Directors. The alleged breach of trust and mis-management of the affairs of the Company relates to internal administration of the Company, and that being so, the scope of interference by a civil Court to enter into the arena is limited. The plaintiffs have in fact approached the Company Law Board, but they withdrew the applications on the purported ground of legal advice. Dehors this, it is a matter of record that both the parties have filed suits against each other claiming relief of injunction. It is also to be noted that both the parties have pleaded, by way of their counters, in the suits filed against each other that the civil Court has no jurisdiction, yet the plaintiffs contend that the *lis* has to be adjudicated by the civil Court under common law remedy. The matters which have been alleged against the respondents are all the matters of statutory rights and/or statutory disqualification covered under the Companies Act and that being so, it is only the Court which has been mentioned in Section 10 of the Companies Act that has jurisdiction to entertain the suit in the facts of the present case. In view of the same, the issues raised in points 2 and 3 need not be

considered in this appeal. In view of above facts and circumstances and for the fore going reasons, the appeal is meritless and it is accordingly dismissed. Miscellaneous petitions, if any pending, shall also stand dismissed. There shall no order as to costs.

**A. RAJASHEKER**

**REDDY, J**

Dated: 02<sup>nd</sup> March, 2016  
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**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**CMA No.680 of 2015**

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**DATED 02-03-2016**

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[\[1\]](#) *(1987) 62 Company Cases 301 AP)*

[\[2\]](#) *(2002 Comp. Cases 516 AP)*

[\[3\]](#) *(AIR 1965 SC 1535)*

[\[4\]](#) *(2001 4 SCC 420)*

[\[5\]](#) *(1976 (1) SCC 496)*

[\[6\]](#) *(2002 (1) ALD 129)*

[\[7\]](#) *(AIR 1995 Bombay 43)*