

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) Nos.94 – 95 of 2018

[Arising out of Orders dated 23rd February, 2018 and 26th February, 2018 passed by National Company Law Tribunal, Mumbai in CP No.272/241-244/NCLT/MB/ MAH/2018]

IN THE MATTER OF:

1. **Shyam Manglunia**
501, Bluebell, Vasant Valley Complex,
Gen. A. K. Marg,
Malad East, Mumbai – 400 097

...Appellant No.1
(Original Respondent No.2)

2. **Rajkumar Manglunia**
601, Bluebell, Vasant Valley Complex,
Gen. A. K. Marg,
Malad East, Mumbai – 400 097

...Appellant No.2
(Original Respondent No.3)

3. **Ronak Manglunia**
301, Lotus, Vasant Valley Complex,
Gen. A. K. Marg,
Malad East, Mumbai – 400 097

...Appellant No.3
(Original Respondent No.4)

4. **Suman Manglunia**
1902, B-Wing, Ivy Tower,
Vasant Valley Complex,
Gen. A. K. Marg,
Malad East, Mumbai – 400 097

...Appellant No.4
(Original Respondent No.5)

5. **Ankit Manglunia**
83/29C, Nilgiri Marg,
Mansarovar, Jaipur – 302020

...Appellant No.5
(Original Respondent No.6)

6. **Sunita Manglunia**
501, Bluebell, Vasant Valley Complex,
Gen. A. K. Marg, Malad East,
Mumbai – 400 097
- ...Appellant No.6**
(Original Respondent No.7)
7. **Aparna Jhunjhunwala**
Flat No.22, Victoria Apt,
St. Alexious Road, Behind Gold Gym,
Pali Naka, Bandra (West),
Mumbai – 400 050
- ...Appellant No.7**
(Original Respondent No.8)
8. **Ritu Manglunia**
601, Bluebell, Vasant Valley Complex,
Gen. A. K. Marg,
Malad East, Mumbai – 400 097
- ...Appellant No.8**
(Original Respondent No.9)
9. **Ruchi Manglunia**
601, Bluebell, Vasant Valley Complex,
Gen. A. K. Marg,
Malad East, Mumbai – 400 097
- ...Appellant No.9**
(Original Respondent No.10)
10. **Govind Manglunia**
94/30, Pratap Marg, Vijay Path,
Agarwal Farm, Mansarovar,
Jaipur – 302020
- ...Appellant No.10**
(Original Respondent No.11)
11. **Sarita Manglunia**
83/29C, Nilgiri Marg,
Mansarovar, Jaipur – 302020
- ...Appellant No.11**
(Original Respondent No.12)
12. **Vinay Manglunia**
94/30, Pratap Marg, Vijay Path,
Agarwal Farm,
Mansarovar, Jaipur – 302020
- ...Appellant No.12**
(Original Respondent No.13)

Versus

1. **Ravi Shankar Srivastava**
405/406 T-37, Royal Empire,
Shastri Nagar, Lokhandwala Road,
Andheri West, Mumbai – 400 053
...Respondent No.1
(Original Petitioner No.1)
2. **Nivedita Srivastava**
405/406 T-37, Royal Empire,
Shastri Nagar, Lokhandwala Road,
Andheri West, Mumbai – 400 053
...Respondent No.2
(Original Petitioner No.2)
3. **Invent Bio-Med Private Limited**
211, Laxmi Plaza, Laxmi Industrial Estate,
New Link Road, Andheri (West),
Mumbai – 400 053
...Respondent No.3
(Original Respondent No.1)
4. **Shardul Srivastava**
405/406 T-37, Royal Empire,
Shastri Nagar, Lokhandwala Road,
Andheri West, Mumbai – 400 053
...Respondent No.4
(Original Respondent No.14)
5. **Bank Manager of SIDBI**
MSME Development Centre
C-11, G Block, BKC,
Bandra (East), Mumbai – 400 051
...Respondent No.5
(Original Respondent No.15)
6. **Bank Manager of Kotak Bank**
Samsung Building, Ground Floor, 159-A,
CST Road, Kalina, Santacruz (East),
Mumbai – 400 098
...Respondent No.6
(Original Respondent No.16)

Present: Shri Amar Dave, Shri Pradhuman Gohil and Shri Himanshu Chaubey, Advocates for the Appellants

Shri Rajiv Singh and Shri Dhawal Deshpande, Advocates for Respondent Nos.1 and 2

J U D G E M E N T

A.I.S. Cheema, J. :

1. The Appellants (original Respondents 2 to 13) have filed this appeal against Order dated 23rd February, 2018 passed by NCLT, Mumbai at interim stage in CP No.272/241-244/NCLT/MB/MAH/2018 (first Impugned Order) and the subsequent Order dated 26th February, 2018 (second Impugned Order) passed in the same matter.

2. What appears is that the Respondents 1 and 2 of the appeal, (original Petitioners) have filed the Company Petition under Sections 241 to 242 of the Companies Act, 2013 ('new Act' in brief). In the Company Petition, they sought ad interim orders moving a Praecipe and sought urgent staying of Extra Ordinary General Meeting (EOGM) scheduled on 24th February, 2018 to remove the Petitioners from their position of Directors and they also prayed that the Resolutions to remove them as Directors should not be given effect to.

3. Original Petitioners claimed before the NCLT that the original Respondent No.1 Company was incorporated in 2005 with the objective of producing and selling medical equipments, devices and other related items. Original Petitioners gave particulars regarding the shareholding,

paid up share capital at the time of incorporation and how the same stood subsequently. It was claimed that initially Company did reasonably well but due to lack of funds became NPA in January, 2015. Original Petitioners claimed that in or around April and May, 2016, original Petitioners met Respondent No.2, a prospective investor and Share Purchase Agreement and Memorandum of Understanding was signed by the investor group which was headed by Respondent No.2 (present Appellant No.1) and the original Petitioners on 24th April, 2017. The Petitioners claimed before NCLT that the Respondent Company allotted 2,83,342 equity shares to the investor group and in Board Meeting dated 08.08.2017, three persons of Respondent group were taken as Additional Directors and in EOGM dated 28.09.2017, they were regularized as Directors. Thus from the Petitioner's side, the Petitioner No.1 was Managing Director and Petitioner No.2 was Director and the investor group came in with three Directors.

4. The Petitioners have given details to show as to how soon, between the Petitioners who are original promoters and Directors and the Respondents – investor group, tussle started.

5. The learned NCLT has referred to the cases put by both sides blaming each other for various acts. The Petitioners claimed that the Respondent No.2 group with intention to take over the Company, called EOGM on 24th February, 2018 at 4.00 p.m. and had issued Notice to the Petitioner No.1 dated 30th January, 2018. Explanatory statement had been added to the Notice.

6. The Impugned Order shows that it was brought before NCLT that the explanatory statement to the Notice made allegations against Petitioner No.1 and *inter alia* it was alleged that an amount of Rs.4,19,75,606/- had been written off as bad debts in respect of amounts receivable in the annual accounts. It was also alleged that original Petitioner No.2 had failed to make any progress in the business and obstructed the performance of Independent Directors from bringing best practices and corporate governance in the Company. Petitioners claimed that from their side Reply had been sent to the explanatory statement.

7. The Respondents claimed before NCLT, mainly contending that illegal activities were committed by Petitioner which had serious bearing on the Company and said acts had surfaced subsequent to the issuance of Notice. Before the learned NCLT Judgement in the matter of **“Life Insurance Corporation of India v/s Escorts Ltd. and Others”** reported in (1986) 1 SCC 264 was relied on by the Respondents but the NCLT was of the view that the said Judgement does not deal with the situation as reflected in the present matter but was on a different set of facts and circumstances with reference to the present matter. NCLT observed :-

“In the present case, which is not just the case of taking a decision in the usual course of business but a decision purportedly to have been taken at the Board level to remove the Managing Director, who is the pillar of the company and without suggesting any name further, to step into the shoes of

the outgoing Managing Director, the Extra Ordinary General Meeting is being called only to remove the Petitioners and not for strengthening the Company with another suitable person to occupy the position of Managing Director. It is true that there are various allegations and counter allegations cast against each other. To appreciate the veracity and the effect of such erroneous decision making as alleged by the Respondents and to take appropriate remedial measures, we need to hear the matter fully and completely by affording an opportunity to the Respondents looking at their reply with the necessary documentation.”

8. It was further observed:

“We are of the opinion that the explanatory statement annexed to the Notice of General Meeting does not make a whisper on the alleged acts of mismanagement purported to have been committed by the Petitioners. Any subsequent acts on the part of the Petitioner are not before us.”

9. The NCLT further recorded reasons and observed that it was also giving reasonable credence to what counsel for Respondents was also submitting on the aspect of possible mismanagement feared to have been committed by the Petitioners and passed the following order:-

“Therefore, we hereby stay the Extraordinary General Meeting scheduled for 24th February, 2018 and restrain the Respondents from holding the same until further orders. We hereby appoint Dr. Gajanan Ratnaparkhi, a Shareholder of the Company, as the nominee Director of the company with immediate effect. We hereby appoint Respondent No.2 as Executive Director of the Company with full powers as that of the Managing Director and every decision which is involving more than Rs.1 lac shall be decided by the Committee of Directors consisting of the Petitioner, Respondent No.2 and the newly appointed nominee Director Dr. Gajanan Ratnaparkhi, a Shareholder of the Company.”

10. Such order appears to have been passed on 23rd February, 2018. It appears that the Petitioner again moved NCLT for urgent mentioning on 26th February, 2018 and the NCLT passed following Order:-

“ORDER

1. The Learned Counsel from both the sides are present.
2. An urgent mention has been made by the Learned Counsel for the Petitioner.

He contended that they informed the Respondents that the matter is sub judice and requested them not to proceed with the holding of the Extra Ordinary General Meeting on 24.02.2018.

3. It is on record that Two Emails are sent to the Respondent by the Petitioner.
4. However, the Learned Counsel for the Respondent contended that they were not aware of any Interim Order passed against them or a Stay restraining them from holding the Extra Ordinary General Meeting has been passed. The email sent by the Respondent is on record.
5. The Deputy Registrar appeared before the Court and clarified that at 11 PM on 23.02.2018 the Interim Orders and the Operative Part of the said Order had been communicated to the Counsel for the Petitioner.
6. It is clear that the Counsel for the Petitioner had failed in his duty to properly communicate the Interim Orders of this Tribunal to the Counsel of the Respondent.
7. It is also on record that as the Respondent was not aware of the Order and therefore the Respondent had conducted the Meeting on 24.02.2018.
8. In view of this peculiar situation and in the best interest of the Company the status quo ante as existed prior to holding of the Meeting on 24.02.2018 is to be maintained by the Respondents.

9. In addition to the above as spelt out in the Interim Orders the Management Committee has to be constituted and proceeded with until the next date of hearing.
10. The Orders of this Hon'ble Court dated 23.02.2018 have been accordingly modified and clarified to the Respondents and other parties that there shall not be any change in the operation portion of the Order already passed.
11. This Order has been pronounced in the Open Court and in the presence of both the Counsel appearing for the Parties.
12. It is clarified that all the contentions claimed by both the parties are kept open and both the parties are open to pursue their respective rights.
13. Matter is adjourned to **16.04.2018.**"

11. It is these two Orders which are subject matter of these appeals and various disputes are being raised in their connection.

12. The learned counsel for the Appellants submitted that the Appellants had entered into the Share Purchase Agreement and had invested crores of rupees in the Company but later on found the original Petitioners to have misused their position in the Company and that they had siphoned off the money. According to the learned counsel, considering

the misdeeds of the original Petitioner, the shareholders of the Company passed 2 Resolutions dated 22.12.2017 and 27.01.2018 whereby it was resolved to add Shri Shyam Manglunia and Shri Rajkumar Manglunia as authorized signatories to alter the structure of account handling and to carry out secretarial and financial audit. However, the original Petitioners were not cooperating in implementing the same and they were harming the interest of the Company. As such Notice dated 30th January, 2018 was issued convening EOGM on 24th February, 2018 to remove original Petitioners 1 and 2 as Directors of the Company. The original Petitioners then filed the Company Petition on 17th February, 2018. It was heard on 22nd February, 2018 and orders were reserved. On 24th February, 2018 at 11.27 a.m., advocate of the original Petitioners sent e-mail to the Company of the present Appellants to restrain themselves from holding EOGM for passing any Resolution till order is communicated by NCLT. The counsel referred to copy of the said e-mail at Page – 132. The learned advocate for the Appellants (original contesting Respondents) then referred to another e-mail sent by original Petitioners (copy of which is at Page – 134) which was sent at 2.33 p.m. and the original Petitioners claimed that on enquiry they had learnt that NCLT has passed orders and copy of Order shall be made available to the parties in due course and so the original Respondents should restrain from holding EOGM. The learned counsel for Appellants has then referred to the e-mail sent by these Appellants on 24th February, 2018 at 4.10 p.m. (Page – 137) to the advocate of original

Petitioners that no Order was communicated/made available to them till 4.00 p.m.

12.1 It appears that the Appellants then proceeded with the EOGM and the original Petitioners were removed as Directors of the Company. The learned counsel for Appellants then referred to Form DIR 12 filed and uploaded on the website of Ministry of Corporate Affairs on Sunday, the 25th February, 2018. It is argued by the counsel for the Appellants that on 26th February, 2018 when the matter was mentioned by the counsel for original Petitioners before NCLT, it was taken up before a Single Judge and although the earlier Order was passed by Division Bench, this second Impugned Order was passed by Judge sitting singly. According to him, the earlier Order of Division Bench could not have been modified by Single Judge. It has been further argued that NCLT observed that no case is made out for winding up and if that was so, the NCLT could not have proceeded with the matter under Section 242. According to the learned counsel, looking to the Judgement relied on in the matter of Life Insurance Corporation, the shareholders are within their right to hold EOGM and removing a Director cannot be a ground for oppression and mismanagement. The required procedure had been followed for calling the EOGM. It is the case of the Appellants that they had not been communicated that any orders have been passed on 23rd February, 2018 and thus their holding of EOGM on 24th February, 2018 could not be faulted with.

13. The learned counsel for the Appellants submitted that the second Impugned Order passed by Single Judge was improper as it was modifying the earlier Order. NCLT could not review its own Order. The Order of status quo ante could not have been passed. There was no application filed by original Petitioners seeking the second Impugned Order. Although the NCLT recorded that the Appellants were not communicated Order dated 23rd February, 2018, still the second Impugned Order came to be passed. According to the learned counsel, the original Petitioners who are Respondents in this appeal have now claimed that they were communicated the first Impugned Order only on 24th February, 2018 but the statement of Deputy Registrar before NCLT was that the counsel had been informed at 11.00 p.m. on 23rd February, 2018. Thus, according to him, there is contradictory stand. Thus, the learned counsel for the Appellants requested that this Tribunal may dispose the present appeal on the lines of Interim Order as was passed on 6th April, 2018 to the following effect:-

“In the meantime, the paragraphs 8, 9 and 10 of the impugned order dated 26.02.2018 passed in Company Petition No. 272/241-244/NCLT/MB/2018 in so far it relates to order of status quo ante and institution of Management Committee shall remain stayed. However, the company or its Board of Directors will not give effect to the decision taken in Meeting

on 24.2.2018, except the decision relating to day to day functioning of the company and payment of salary etc.”

14. It has been argued that the first and second Impugned Orders should be replaced with directions on above lines.

15. Against this, the learned counsel for original Respondents 1 and 2 claimed that there was no illegality in the Impugned Orders which were passed. The NCLT had only recorded the conduct of the parties and no finding as such was yet arrived. The investor group of original Respondents (Appellants) had 3 Directors and the promoter group – original Petitioners had 2 Directors. According to the counsel, looking to the disputes between the parties, NCLT considered the shareholding pattern and in the interest of the Company found it appropriate to have a via media so that the interest of the Company does not suffer. In view of this, the NCLT in the Order passed on 23rd February, 2018 and appointed Dr. Gajanan Ratnaparkhi – a nominee Director who is also shareholder in the Company but who is not concerned with either the investor group or the promoter group and thus an independent person. The NCLT has appointed the Appellant No.1 (original Respondent No.2) as Managing Director of the company with full powers but with a check, and kept original Petitioner No.1 as the other Director so that the affairs of the Company can run smoothly between such Committee of Directors.

16. The learned counsel for Respondents 1 and 2 (original Petitioners) further submitted referring to the e-mails referred to by the

learned counsel for the Appellants to show that on 24th February, 2018, the original Petitioners sent the e-mails requesting the Appellants to await Orders of the NCLT but the Appellants went ahead with the EOGM. The Appellants also submitted Form on MCA website on Sunday, the 25th February, 2018 which they withdrew later vide letter dated 26th February, 2018, copy of which has been filed at Page – 140 of the appeal.

17. The learned counsel for original Petitioners has then referred to documents filed with Reply in Appeal of these original Petitioners to show that subsequent to the first Impugned Order, the Appellants have acted upon the said Orders and the Company is functioning with the concerned Committee of Directors constituted by NCLT. The counsel referred to the Reply filed in this regard vide Diary No.4432 and documents annexed which includes Resolution dated 27th March, 2018. The submission is that the Appellants are acting upon the directions of NCLT but still questioning the orders. It has been argued that NCLT did not modify the first Impugned Order when it passed the second Impugned Order. The second Impugned Order was under Rule 11 of the NCLT Rules giving inherent powers to the NCLT to do justice. Due to confusion regarding communication of the first Impugned Order, even if the EOGM was held, what the NCLT did by the second Impugned Order was to restore the position as it stood when the first Impugned Order was passed. According to the learned counsel, interest of the Company was material and that is what the NCLT has done.

18. Having heard the counsel for both sides and considering the rival cases of both the parties and the stage at which the present litigation stands, as well as keeping in view the fact that this appeal is only against the Interim Order dated 23rd February, 2018 read with the Interim Order dated 26th February, 2018, we find that the material consideration is the interest of the company. The rival claims about who is right or who is wrong is not necessary to be gone into in details, at present stage. Section 242(4) of the Companies Act, 2013 reads as under:-

“242(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company’s affairs upon such terms and conditions as appear to it to be just and equitable”

19. When the above provision is kept in view and it is appreciated that in the present matter on one side, there is the promotor group who were managing the company and who entered into share purchase agreement and MOU with investor group led by original Respondent No.2 and there was transfer of shares and soon disputes have started, leading to Notice by the investor group (who were given 3 Directors viz-a-viz 2 of the promoters) issuing Notice for removal of the two Promoters Directors, we find that what NCLT has done in the situation should not be disturbed. The NCLT has keeping in view the interest of the Company appointed the Appellant No.1 - Shyam Manglunia (original Respondent No.2) as

Managing Director of the Company with full powers as Managing Director with certain conditions and has made a Committee of Directors which includes the Petitioner, (the reference appears to be to original Petitioner No.1) as Director and newly appointed nominee Director Dr. Gajanan Ratnaparkhi. We are told that he is a Cardiologist and not concerned with either the promoter group or the investor group. Thus, the NCLT has at this initial stage of the litigation, exercised its powers which appear to be striking fair balance between the two groups. The learned counsel for the Respondents (original Petitioners) in appeal have pointed out as to how the Appellants are even acting upon these directions of the learned NCLT to proceed with the affairs of the Company. Although we have heard counsel for both sides, and we are keeping in view the rival submissions, we find that the learned NCLT has exercised discretion judicially when Ad Interim Order was sought from it to protect the interest of the Company till the petition is decided. We do not wish to interfere in the discretion exercised.

20. We find no substance in the argument that the Interim Order dated 23.02.2018 could not have been passed as NCLT observed that the situation of the Company as presented in the Petition does not in any way lead or aim at the winding up. According to us at interim stage like the present one, this observation was pre-mature. Looking to rival claims, case of oppression and mismanagement is yet to be decided. NCLT itself has to above observation added that the Petition definitely projects the oppressive acts purportedly committed by the Respondent group.

21. As regards the various contentions raised with regard to the Order dated 26.02.2018, what appears from overall reading of the Order is that NCLT did pass orders on 23rd February, 2018 in the course of the day. It is true that the NCLT accepted what the Deputy Registrar appeared in the Court and said that at 11.00 p.m. on 23rd February, 2018, the Interim Orders and operative part of the Order had been communicated to the counsel for the Petitioner. But then, there is material showing that even on 24th February, 2018 by 2 emails, the counsel for original Petitioners kept requesting the original Respondents to postpone the EOGM as the Orders were yet not in their hands and that the matter was sub judice. At the time of arguments, we asked the learned counsel for the Appellants (original Respondents) as to what would be the benefit to the original Petitioners not to inform the stay to the EOGM (which they were clamouring for) if they had really come to know about it. There was no clear answer from the learned counsel. All said and done, what appears is that there was a gap in the communication of the Orders dated 23.02.2018 and the Respondents went ahead with the EOGM to remove the original Petitioners as Directors and what the Order dated 26th February, 2018 has done is that it has maintained the status quo ante 24.02.2018. When even the Respondents had participated in the arguments which appear to have taken place on 22nd February, 2018, they were aware that the matter is under consideration of the NCLT and thus, even if they continued with the EOGM it had to be subject to what NCLT holds. The NCLT has used the words “modified and clarified” and learned counsel for the Appellants is

trying to bank on these words to make submissions that the Order dated 23rd February, 2018 was by Division Bench and the Order dated 26th February, 2018 is by the Single Judge. However, we do not think that the Order dated 26th February, 2018 has in any manner modified or clarified Order dated 23rd February, 2018. What it has done is to direct and make clear to the parties that Order dated 23.02.2018 will be followed even if the EOGM had been held. Thus, what survives is the Order dated 23rd February, 2018 constituting a Committee of Directors.

22. We do not wish to interfere with the Orders passed by the learned NCLT by substituting our discretion for what has been exercised by the learned NCLT. There is no substance in the appeal.

23. The appeal is dismissed.

No order as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

New Delhi

30th May, 2018

/rs/nn