

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 192 of 2017

IN THE MATTER OF:

**1. Radeyshyam Mandwani
175, Palsikar Colony,
Indore -452001
Madhya Pradesh**

...Appellants

**2. Mukesh Matta
64, Palsikar Colony,
Indore -452001
Madhya Pradesh**

Vs

**1. Santosh Devcon Pvt. Ltd.
G-2, Classic House, Scheme No. 101,
Manik Bagh Road,
Indore (M.P.) 452002
Madhya Pradesh**

....Respondents

**2. Sunil Tarachand Mandwani
H.no.53, Palsir Colony,
Ward No. 57,
Indore -452001
Madhya Pradesh**

**3. Ashok Mandwani
53/1, Palsir Colony,
Indore -452001
Madhya Pradesh**

Present:

**For Appellants: Mr. Manoj Munshi and Mr. R. D. Makhija
Advocates.**

**For Respondents: Mr. Vijay Assudani, Advocate for Respondent no. 1
& 2.
Mr. Pradeep Tiwari, Advocate for Respondent no. 3.**

Judgment

06.12.2017: Heard counsel for the appellants and respondents no. 1 to 3. Perused Impugned Order dated 29.03.2017 passed in T.P. 113-D/ 2016 (CA 50/16-old) in T.P. 113/16 by learned National Company law Tribunal, Ahmedabad ('NCLT' in short).

2. The only question that arises for determination in this matter is whether the learned NCLT was justified in staying the Company Petition till 3 sessions trials arising between the parties are decided.

3. What appears is that the respondent no. 1 company was incorporated somewhere in 2011. The shareholding ratio of appellant no. 1 was 34 per cent, appellant no. 2 was 15 per cent and respondent no. 2 was 51 per cent. The appellants and respondent no. 2 were the directors. It is the case of the appellants that respondent no. 2 without calling the meeting of the director removed the appellant no. 1 on the basis of forged resignations of appellants as Directors and DIR-12 forms were submitted accordingly. It is stated that, respondent no. 2 claimed that appellant no. 1 on 17.12.14 & Appellant no. 2 on 15.12.14 resigned as Directors. It is claimed that subsequently in the meeting dated 26.12.2014 respondent no. 2 illegally allotted 30000 equity shares to himself and also illegally appointed respondent no. 3, his real brother as a Director. Thus the petition was filed.

4. It appears that the appellants also made a complaint regarding forged resignations to the police and the investigations were held leading to filing of Criminal cases.

5. The respondent no. 2 sought stay of the company petition till the Sessions trials are over. The learned NCLT was of the view that the Criminal Court has to decide whether the resignation letters are forged or not. It observed that expert reports have been obtained. It observed that it has also to decide in the main company petition the issue relating to the allotment of 30000 shares to respondent no. 2 and appointment of respondent no. 3 as Director.

6. Relying on Judgment of "*M/s. Shareef Vs. The State of Madras and Ors.*" reported in AIR 1954 Supreme Court 397, the NCLT went on to stay the proceedings.

7. Learned counsel for the respondents are submitting that the NCLT has rightly stayed the proceeding relying on the observations of the Hon'ble Supreme Court. The counsel submitted that the NCLT found that there was scope of conflicting findings and there was no possibility of deciding the controversies keeping aside the issue of forgery because it has bearing on all other subsequent affairs of the first respondent company.

8. Learned counsel for the appellant has submitted that there are many other subsequent judgments of the Hon'ble Supreme Court after the matter of

“M/s. Shareef” and as per Judgments material is to consider facts of the case to consider whether or not to stay the matter.

9. Section 422 of the new Companies Act reads as under:

“Expeditious disposal by Tribunal and Appellate Tribunal. (1)

Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

(2) Where any application or petition or appeal is not disposed off within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.”

10. Thus the Company Petition is required to be disposed off within a period of 3 months. Counsel for both sides agree that basically the NCLT would in a Company Petition consider documents filed by either parties supported by affidavits to decide the matter. In rare case oral evidence may have to be taken it is stated.

11. We find that relying on the matter of "*M/s Shareef*" will not be helpful in the present set of facts as in that matter the observation was that "civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime." In the present matter looking to the new provision of the Companies Act, 2013 referred above there cannot be such a contingency and the Company Petition has to be expeditiously decided. There is no question of embarrassment as the respondents have already filed reply here denying the allegations of appellants that the resignations are forged documents. In fact the respondent no. 2 has given reasons as to how and why the resignations came to be filed.

12. While considering the company petition, the learned NCLT would be required not merely to consider the alleged resignations but interalia it will also be seeing if the same were in compliance with Section 168 of Companies Act, 2013 and duly placed before the Board of Directors. Contents & effect of contents of alleged resignations would also be factor. The Company Petition would have to be decided considering even these aspects and only thereafter

the subsequent act of allotment of 30,000 shares by respondent no. 2, and appointment of respondent no. 3 as director would come up. Thus, it would not be mere reading of the resignation letter but it will also have to be seen that even if it was accepted that resignation letters were signed, it would be required to examine, if they were duly executed by Petitioners and if there were due compliances of Section 168 of the Companies Act, 2013 placing the same before the Board of Directors after proper notice, agenda & note taking, as well as placing the same before immediately following general meeting of the company.

13. If the facts of the present case are seen, the appellants who had collectively 49 per cent of shares and were directors have pleaded in the Company petition:

“IX. Since last around one year, the Respondent No. 1 and 2 were not sending any notice of Board of Directors meeting to the Petitioners nor any notice for the general Meeting of the shareholders of the Respondent No.1 Company. The Petitioner No. 1 and 2 were continuously following up with the Respondent No.1 and 2 so that proper decorum and discipline be maintained in the Company so that proper Board of Directors meeting and shareholders meeting is held in the Respondent No.1 Company as provided under the Companies Act, 1956.2013. But the Respondent No. 2 had the

fraudulent intentions and objectives of hijacking and taking over the entire Respondent No.1 Company.

X. During November, 2014, the Petitioners apprehended that the Respondent No.2 wants to commit fraud and wants to take over and hijack the Respondent No. 1 Company to the prejudice and loss of the Petitioners. Therefore, on 22.11.2014, both the Petitioners visited the office of the Statutory auditors viz Pankaj Patwa & Associated, Chartered Accountants, and informed him that Respondent No. 2 is planning to hijack and to takeover the Company illegally to the prejudice and loss of the Petitioners. Thereafter the Petitioners handed over their letters dated 24.11.2014 to the statutory auditors of the Company viz Pankaj Patwa & Associates bringing out all the facts. Annexed herewith copy of the said letter marked as Exhibit "C-1" & "C-2". Thereafter on 29.11.2014 the petitioners filed their letter with Registrar of Companies, Gwalior stating that no new forms shall be taken on record and stating that Respondent No. 2, Mr. Sunil Mandwani is planning to commit the fraud upon the Company. Annexed herewith the copy of the said letter dated 29.11.2014 and marked as Exhibit "D". On 6th December, 2014, Mr Nitin H Phadke, Advocate on the instructions of the Petitioner herein addressed a letter dated 6th December, 2014 to Mr. Sunil Mandwani stating that it appears that Sunil Mandwani is trying to perpetuate a

fraud in the Company and wants to illegally take over the Company and instructed Mr. Sunil Mandwani not to take any illegal steps detrimental to the Petitioners herein failing which the appropriate proceeding civil as well as criminal action will be taken against Mr. Sunil Mandwani by Mr. Radheshyam Mandwani and/or Mr. Mukesh Matta. Annexed herewith the copy of the said letter dated 06.12.2014 and is marked as Exhibit "E".

XI. On 15th December, 2014 a form No. DIR 12 was filed with the ROC purporting to accept the resignation letter dated 15th February, 2014 of Mr. Mukesh Matta, Respondent No. 2, Along with the DIR-12, the forged resignation letter of Mr. Mukesh Matta was attached. Also the false letter of acceptance of resignation by Mr. Sunil Mandwani was attached. This Form DIR-12 was filed with fabricated documents by the Respondent No. 2 Annexed herewith a copy of the said DIR-12 and marked as Exhibit "F".

XII. On 16th December, 2014, the Form No. DIR 12 was filed purporting to appoint Respondent No. 3 as the Director of Respondent No.1 Company. No Board meeting was held on 16.12.2014. None of the other Directors viz neither Mr. Radheshyam Mandwani was present in the Board Meeting nor Mr. Mukesh Matta was present nor the Board Meeting was conveyed at all. So this was

a false Board Meeting made by Respondent No. 2 with the illegal objective of Hijacking and taking over of the Respondent No. 1 Company. Annexed herewith a copy of the said Form No. DIR-12 and the same is marked as Exhibit "G"

On 17th December, 2014, the Respondent No. 2 filed the Form DIR 12 purporting to accepting the resignation of Mr. Radheshyam Mandwani. Along with the DIR-12, the forged resignation letter of Mr. Radheshyam Mandwani was attached. Also the false letter of acceptance of resignation by Mr. Sunil Kumar Mandwani was attached. This Form DIR-12 was filed with fabricated documents by the Respondent No. 2. Annexed herewith a copy of the said Form DIR-12 and the same is marked as Exhibit "H" "

14. Thus from before alleged resignations of December, 2014, petitioners had issued legal notice. All these factors would have to be considered.

15. It is apparent that mere reading of a letters purporting to be resignations is not the issue. Even if it was to be said to be resignation, it would have to go through necessary process to be acted upon. The attending circumstances will also be material.

16. The present scenario is that the respondents have taken over charge of the company and although they are facing allegations of forgery and hijacking

of the company, the appellants may have to sit idling till criminal cases are decided. This does not appear to be in the interest of justice. The Company being on-going concern, Company Petition should be decided on its own merits at the earliest. In view of this, we do not find that it is appropriate to keep the company petition pending endlessly.

17. Considering the provisions of the Companies Act and the aims and objectives for deciding the company petitions early, we find that the impugned order is not maintainable. It deserved to be set aside.

18. The impugned order in TP 113-D/2016 (CA No. 50 of 2016-Old) in Company Petition no. TP 113 of 2016 is quashed and set aside. Learned NCLT shall decide the Company Petition, as per provisions of the Companies Act, 2013 at the earliest, without being influenced by Impugned Order or our observations regarding relevant factors made above.

No orders as to costs.

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

(Mr. Balvinder Singh)
Member (Technical)

Sh/nn