

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.40 OF 2018

(ARISING OUT OF IMPUGNED ORDER DATED 12TH DECEMBER, 2017 PASSED IN COMPANY PETITION NO.43/241/HDB/2017 BY NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HYDERABAD)

IN THE MATTER OF:

Dr. Venigalla Naveen
Flat No.103,
Royal Court Apartments,
Road No.11, Banjara Hills,
Hyderabad-500032
Telangana

Before NCLT

Petitioner

Before NCLAT

Appellant

Vs

- | | | |
|---|----------------------------|----------------------------|
| 1. Dr. Rama Krishna Prasad Power Ltd,
103 Royal Court Apartments,
Road No.11, Banjara Hills,
Hyderabad-50034 Telangana. | 1 st Respondent | 1 st Respondent |
| 2. Mrs Vijayalakshmi Venigalla,
Vills #6, SLN Lumbini Springs,
Behind Botanical Garden,
Kondapur,
Gachibowli,
Hyderabad 500032 | 2 nd Respondent | 2 nd Respondent |
| 3. Dr. Praveen Venigalla
R/0 332, Timber Ride CT,
Neptune, New Jersey -07753
United Sates of America. | 3 rd Respondent | 3 rd Respondent |
| 4. Mrs Tupili Sri Hari Priya,
D/o G. Ramasubba Reddy
R/o No.8-2-120/86/E, Road No.3,
Banja Hills,
Hyderabad 500034. | 4 th Respondent | 4 th Respondent |
| 5. Mr. Kalluri Jithender
Chartered Accountant (ACA 233009)
H.No.2-25/13, Indranagar,
Gachibowli,
Hyderabad 500032 | 5 th Respondent | 5 th Respondent |

For Appellant:- Mr. B. Suyodhan, Advocate.

For Respondents:- Mr. Harinath Reddy, Mr. Mithun Shasnak, Advocates.

JUDGEMENT

MR. BALVINDER SINGH, MEMBER (TECHNICAL)

The present appeal has been filed by the appellant under Section 421(1) of the Companies Act, 2013 being aggrieved by the impugned order passed in Company Petition No.43/241/HDB/2017 filed in National Company Law Tribunal, Hyderabad Bench, Hyderabad (NCLT in short) whereby the Company Petition has been dismissed vide impugned order dated 12.12.2017.

2. The brief facts of the case are that the 1st respondent company was initially incorporated on 27.5.2009 with initial Authorised Capital of Rs.5 lakh divided into 50000 number of shares of Rs.10/- each. Subsequently the authorised capital of the 1st respondent was enhanced from Rs.5 lakh to Rs.10 crores divided into 1,00,00,000 number of equity shares of Rs.10/- each. The appellant stated that the following is the shareholding pattern of 1st respondent:-

Name	Number of shares held	Percentage
2 nd Respondent	34,55,000	34.55%
Dr. Ramakrishna Housing Pvt Ltd	39,45,000	39.45%
Respondent No.3	13,00,000	13.00%
Appellant	13,00,000	13.00%
Total	1.00,00,000	100.00

1st respondent proposed to establish a 120 MW Coal based thermal Power Plant at Sri Ramachandrapur Village, Chatrapur, Ganjam Distt, Odisha.

3. The appellant is the elder son of 2nd respondent. The appellant is a qualified Medical Doctor and was doing service in USA. It is stated that at the request of 2nd respondent, the appellant came back to India to take over the management of 1st respondent in 2009. The appellant was appointed as a Director of 1st respondent on 26.11.2009 and later on was elevated to the

position of Managing Director on 29.3.2010. It is stated that the appellant invested an aggregate amount of Rs.1,33,53,938/- out of which Rs.1,30,00,000/- has been converted towards equity shares of 13,00,000 of Rs. 10/- each representing 13% of the paid up capital of 1st respondent and balance Rs.3,53,938/- parked as unsecured loan with the 1st respondent as on 31.3.2014. It is stated that after his taking over as Managing Director of 1st respondent, due to his efforts he obtained various approval and permission from Government Authorities/Departments and procured land admeasuring Ac.57.675 and also got environment clearance.

4. It is stated that 2nd respondent, mother of the appellant, being head of the family was Chairperson of 1st respondent and also exercising exclusive cheque signing powers.

5. It is stated that the appellant observed certain irregularities in bank account operation and when he brought it to the notice of the 2nd respondent, the 2nd respondent got offended and for her own reasons she started avoiding the appellant and not cooperating with him. It is stated that the 2nd respondent being under undue influence of some self centered persons and misleading her with false information and trying to wedged huge gap in the natural relationship between the mother and sons with deep rooted conspiracy of somehow getting rid of the appellant from the affairs of 1st respondent.

6. It is stated that to succeed in their designs, 1st to 3rd respondent indulged in creation of fake EGM Resolution as if the 3rd respondent was shown to have been appointed as a Director of the 1st respondent at a purported EGM on 2.11.2016 which was not held. It is stated that a Form No.DIR-12 was uploaded on 30.11.2016 to this effect. It is stated that 2nd respondent, through a letter dated 1.12.2016, proposed to pass two circular resolutions one for appointing Mrs Sri Hari Priya Tupili, 4th respondent, as an Additional Director and also to change in the Registered Office and the said resolution was passed on 8.12.2016. It is stated that the appellant objected for the appointment of 3rd and 4th respondents as Director and Additional Director but it did not reflect his dissent in the minutes of the said Board Meeting dated 22.12.2016. It is stated that the appellant seriously objected and denied to have passed any resolution on 2.11.2016 appointing 3rd respondent as Director and also rejecting the so called

circular resolution dated 9.12.2016 appointing 4th respondent as Additional Director.

7. It is stated that in the minutes of Board Meeting dated 22.12.2016 it was shown in Item No.6 that the Board removed the appellant from Managing Director under the garb of 'change of designation' from Managing Director to Director. It is stated that his dissent was not recorded in the minutes.

8. It is stated that the appellant received an email dated 29.1.2017 (Page 213) from 1st respondent alongwith scanned copy of notice dated 26.1.2017 (Page 214) signed by 4th respondent therewith also enclosing a notice dated 23.1.2017 (Page 215) moved by shareholder to remove the appellant as Director of 1st respondent. It is stated that the appellant received another notice dated 26.1.2017 (Page 216) signed by 2nd and 4th respondent to consider removal of the appellant as Director of 1st respondent company. It is stated that the appellant raised serious objection to the above notices vide his letter dated 28.1.2017 stating that 4th respondent is impersonating herself as a Director of 1st respondent company as she was not appointed as such in the company. The appellant also sent an email dated 15.2.2017 to the 3rd respondent that he was not a Director appointed on 2.11.2016 and he should be restrained from acting as Director in any manner and not to be a party to fraudulent records being created. It is stated that various e-forms have been digitally signed and uploaded into ROC/MCA webportal by the 5th respondent.

9. In view of the above development, the appellant filed company petition before the NCLT alleging oppression and mismanagement. Reply was filed by the Respondents. After hearing the parties the NCLT passed the impugned order dated 12.12.2017. Relevant para of the impugned order is as under:-

“20. It is settled principle of law that the Courts/Tribunal will not, in general, intervene at the instance of shareholders in matters of internal administration; and will not interfere with the management of a Company by its directors so long as they are acting within the powers conferred on them under the articles of the Company. And the internal disputes between the shareholders is to be made the subject matter of an action by shareholders, which is laid down as

early as 1843 in the celebrated case of Foss Vs Harbottle. (Fos Vs Harbottle (1843) 2 Hare 461.)

21. The Hon'ble Supreme court of India, in the case of Rajahmundry Electric Supply Corporation Ltd Vs Nageshwara Rao (1956) 26 Comp. Cas. 55 (S.C.) 196 SCJ 310; 1955(2) SCR 1066: AIR 1956 SC 213, is observed as follows:

“The courts will not, in general, intervene at the instance of shareholders in matters of internal administration and will not interfere with the management of a company by its directors so long as they are acting within the powers conferred on them under the Articles of the company. Moreover, if the directors are supported by the majority of the shareholders in what they do, the minority shareholders can, in general, do nothing about it.”

22. As stated supra the Company is closely held family Company, and elder son of the 2nd respondent has filed the case by raising frivolous grounds. By virtue of impugned decisions the shareholding of the Petitioner was not at all affected but in order to set right the affairs of company, which is at crucial stage, the petitioner was removed from the position of MD and Director in accordance with law. As rightly pointed out by the respondents, when Company itself has not started its operations as per its object as mentioned in its memo and all funding of the Company is met through sources of family of second respondent, the question of oppression and mismanagement in the affairs of Company, even to examine, is too premature. And the petitioner's interest is not too much adversely affected especially being a minority shareholders and the mother is head of family. The petitioner is legally and morally bound by the decisions taken by the second respondent, who is mother of petitioner and Chairperson also. The petitioner has also failed to establish any ingredients of as prescribed under Sections 241 to 244 of Companies Act, 2013 so as to interfere in the affairs of the Company. However, the petitioner still holders of 13% of Shares of the Company, is entitled for due notice for any ensuring meetings of

the Company, and the Company should follow principles of natural justice, in conducting any future meetings/taking any decision(s).

23. For the reasons stated above, I am of the considered opinion that the petitioner failed to make out any case so as to interfere in the affairs of the Company, and thus it is liable to be dismissed. Accordingly the Company Petition bearing CP No.43/241/HDB/2017 is hereby dismissed. No order as to costs.”

10. Being aggrieved by the said impugned order dated 12.12.2017 the appellant has filed the present appeal thereby seeking the following reliefs:-

a) Set aside the impugned order dated 12th December, 2017 passed by the Hon'ble National Company Law Tribunal, Hyderabad Bench in CP No.43/241/HDB/2017.

b) Pass such order and further orders as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case.

11. The appellant stated that he was appointed as Director of 1st respondent on 26.11.2009 and later on he was appointed as Managing Director of the 1st respondent on 29.3.2010. The appellant further stated that he was authorised by 2nd respondent to execute lease agreement on behalf of 1st respondent with IDCO on 21.1.2015 (Page 154-155).

12. The appellant stated during the course of discharging his function as Managing Director, he observed certain irregularities in operating the bank account of 1st respondent and when the issue was taken up with 2nd respondent she got offended and with the help of 4th respondent, has conceived a plan to create certain documents and thereby removed the appellant from the directorship. The appellant stated that 3rd respondent was inducted as Director in EGM dated 2.11.2016. The appellant stated that he never received any notice with regard to the alleged EGM dated 2.11.2016 and the appellant being a promoter shareholder as well as the Managing Director of the Company had no knowledge of any EGM being held.

13. The appellant came to know about the alleged EGM dated 2.11.2016 and that 3rd Respondent was appointed as a Director on the said date. The appellant immediately replied on 2.11.2016 that he did not pass any resolution (Page 201).

14. The appellant stated that 4th respondent was appointed as Additional Director of the 1st respondent on 9.12.2016 and on 14.12.2016 notice of Board Meeting was issued by 2nd respondent.

15. Respondents have filed the reply and admitted the present shareholding of 1st respondent. It is stated that the appellant after having considerable setback in his professional and personal life returned to India in the year 2009 and the 2nd respondent appointed the appellant as director in 1st respondent and also allotted him 13% shareholding. It is stated that 2nd respondent is the mother of the appellant and 3rd respondent. It is stated that due to hard efforts of 2nd respondent, 1st respondent secured necessary permission from State Government of Odisha for setting a power plant. It is stated that the appellant re-married in the year 2012 and was subsequent made the Managing Director of the Company. Appellant moved to Odisha with his wife and started to misuse and siphoned off the funds and resources of the company.

16. It is stated that and EGM was held on 2.11.2016 and 3rd respondent was appointed as Director and on 9.12.2016, 4th respondent was appointed as the Director of the 1st respondent.

17. It is stated that a notice dated 14.12.2016 was issued calling for Board of Directors Meeting on 22.12.2016 at 7 PM and the appellant was in receipt of the same. Accordingly, the meeting was held on 22.12.2016 and the appellant was removed as MD of the 1st respondent (Page 11 to 18 of Reply affidavit) and on 31.5.2017 the appellant was removed as the Director from 1st respondent (Page 43 of Reply affidavit).

18. It is stated that the EGM held on 2.11.2016 is valid and the same was held in accordance and in compliance with the terms of Articles of Association of 1st respondent and in compliance of the provisions of the Companies Act, 2013 (Para 16, impugned order) and the appellant was aware of the notices issued for appointing the Respondent No.3 and 4 as the directors of 1st respondent.

19. It is stated that the appellant has not submitted any material before the Hon'ble Tribunal to establish or even suggest that he has been a victim of Oppression and Management

20. We have heard the parties and perused the record.

21. Learned counsel appearing on behalf of the appellant argued that no notice was submitted by 2nd respondent calling for an EGM and no such notice has been placed on record by 2nd respondent and no proof of service of such notice to any of the shareholders is placed on record to establish issuance of notice. Learned counsel for the appellant further argued that the appellant being the Managing Director of the company and also shareholder of 1st respondent had no knowledge of the alleged EGM being held on 2.11.2016

22. Learned counsel for the respondents argued that the said Meeting was held in terms of the provisions of Companies Act, 2016 and the appellant was very well of the said Meeting.

23. We have gone through the company petition filed by the appellant before the NCLT. We observe from para 4.6 at Page 63 of the petition which states as under:

*“To succeed in their designs, the Respondent No.1 to 3 indulged in creation of fake EGM resolution as if the 3rd Respondent was shown to have been appointed as a Director of 1st respondent company at a purported EGM on **02.11.2016** which was not at all held. But a fake and fabricated **Form No.DIR-12** was unloaded on **30.11.2016** into the ROC/MCA Webportal in connivance with some professionals who are more than willing to be a part of the conspiracy, fraud, fabrication of statutory documents.xxxxxx”*

In reply the respondents had stated at Para 9 Page 239, in their reply that *“the respondent herein respectfully submits that the resolution dated 02.11.2016 is neither fake nor is created as alleged or at all. It is submitted that the said meeting was held in terms of the provisions of the Companies Act, 2013. There are no back ground players behind the 2nd respondent as alleged by the petitioner. Xxxxxx”*

In the impugned order dated 12.12.2017, para 17, page 48, the NCLT has given his findings as under:

“17.xxxxx However, the petitioner has sent an email dated 22.12.2016 (Page 149 Annexure-P20) to the 2nd respondent by stating that there was no resolution passed on 2.11.2016, appointing Dr.

Praveen Venigalla (R-3) as Director and also rejected resolution dated 09.12.2016xxxxxxx”

After going through the company petition and the reply filed by the respondents therein, we observe that the appellant in para 4.6 has nowhere stated that no notice was given by 2nd respondent for calling for an EGM and that no proof of service has been submitted. However, the NCLT while giving his findings has mentioned that the appellant had sent an email dated 22.12.2016 to 2nd respondent and stated that there was no resolution passed on 2.11.2016, appointing Dr. Praveen Venigalla.

We have further gone through the email dated 17.12.2016 (Page 204 of the appeal paper book) sent by 2nd respondent to the appellant and 3rd respondent by which the Minutes of the meeting held on 2.11.2016 were sent. In reply vide email dated 22.12.2016 (Page 204 of the appeal paper book), the appellant has replied to 2nd respondent as under:-

“I did not pass any resolution on 2.11.2016 appointing Dr. Praveen Venigalla as director.”

On careful analysis of the reply sent by appellant to 2nd respondent clearly establishes that the appellant has not stated that he did not receive the notice for the meeting or he did not attend the said Meeting. He simply stated that he did not pass any resolution on 2.11.2016 appointing 3rd respondent as director. Therefore, it appears that the appellant is apparently against the appointment of 3rd respondent as Director of 1st respondent but this will not amount to prove that he was not informed or was not aware of the Meeting and the said Meeting was not held in terms of provisions of Companies Act, 2013. Apart from this, considering the shareholding of parties as noted in para 2, (which includes Respondent No.3), Respondent had no fear not to serve Notice on Appellant for holding EGM. Thus the argument that the Notice was not given has no substance.

24. Learned counsel for the appellant stated that the certified true copy of the extracts of Resolution passed at the EGM dated 2.11.2016 is signed and attested by the 2nd respondent with the stamp/seal of Dr. Rama Krishna Prasad Housing (P) Ltd. It is argued that Dr. Rama Krishna Prasad Housing (P) is the only a shareholder in the 1st respondent and the alleged requisitioner who had called

for an EGM. The alleged extract of Resolution dated 2.11.2016 has not been signed by any of the Directors of 1st respondent. Learned counsel further argued that the circumstances alone shows that there was never an EGM held on 2.11.2016 and the said document is created only for the purpose of inducting 3rd respondent illegally and the resolution dated 2.11.2016 of the EGM is a forged and fabricated document.

25. Learned counsel for the Respondents argued that the extract of the resolution passed at the EGM dated 2.11.2016 has been signed by the director of 1st respondent and it is not a fabricated or forged documents.

26. We have perused the extract of resolution at Page 188 of the Appeal Paper Book. We find that the said extract has been duly signed by Ms Vijaya Lakshmi Venigalla, Director DIN:02623801, who is 2nd Respondent and also Chairperson of 1st respondent company. It could be possible if the person is Director in more than one company. The status of the person in respect to the company for which the document is signed is not doubted solely on the ground that the stamp of other company is also appearing and specially in the matter of oppression and mismanagement where minor technical infirmities would not amount to vitiate the whole action.

27. Learned counsel for the appellant argued that all the resolutions and actions of the respondents post 2.11.2016 are illegal and liable to be set aside as all those actions of the respondents were perpetrated because of they being in majority in the Board of Directors which was only possible with the induction of 3rd respondent as a Director in a fictitious EGM dated 2.11.2016 which was never conducted.

28. Learned counsel for the respondents argued that no material evidence has been submitted by the appellants that the resolutions and actions of the respondents are illegal. Learned counsel for the respondent argued that the 3rd respondent was legally appointed as Director and the EGM dated 2.11.2016 was validly held.

29. We have considered the arguments advanced by both the parties. Learned counsel for the appellant has failed to provide any evidence to substantiate his allegations. It is also noted that the appellant has been Managing Director of the 1st respondent from 29.3.2010 to 22.12.2016 almost 6 ½ years and he has

no inherent right to continue as Managing Director/Director in the 1st respondent unless he is able to carry the majority shareholders with him. Therefore, there is no force in the arguments of appellant and the same is rejected outrightly.

30. Learned counsel for the appellant argued that the appellant being a shareholder of the company is entitled to peruse and have a copy of the Power Purchase Agreement which the respondents are claiming to have entered into with NTPC. In spite of several requests made by the appellant the same has not been provided till date with the same.

31. Learned counsel for the respondents argued that 1st respondent company has been granted all requisite permission to start a power plant. NTPC has issued a Power Purchase Agreement. Till now the company has been able to meet its expenses by funds mobilised by 2nd respondent. 2nd respondent is securing a financial partner to commence the operations. Thus there is no scope for any mismanagement of the account of 1st respondent as alleged or at all.

32. We have heard the parties on this issue. We are of the view that non providing the copy of the Power Purchase Agreement relates to operation of the company and does not come under oppression and mismanagement.

33. In view of the above observations and discussions, the appeal is dismissed. No order as to costs.

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

(Balvinder Singh)
Member (Technical)

New Delhi

Dated:22-2-2019

BM