

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 301 of 2019

IN THE MATTER OF:

Birendra Kedia

.....Appellant

Vs.

Dinesh Kumar Jalan & Ors.

.....Respondents

Present :

For Appellant: **Though present but not marked attendance**

O R D E R

06.11.2019 - Heard Learned Counsel for the Appellant. It is stated that in Company Petition TA No. 43/18 is pending before the 'National Company Law Tribunal', Jaipur and the Petition could have been taken up and finally decided but the Tribunal has passed the Impugned order dated 11th October, 2019 permitting AGM to be held under supervision of a Chairperson appointed. The Tribunal has allowed agenda interalia to consider the appointment of Mr. Mahesh Kumar Jalan as Director of the Respondent Company.

Learned Counsel states that the appeal has been filed questioning the appointment of Chairperson as well as admitting the inclusion of the subject in the agenda regarding appointment of Mr. Mahesh Kumar Jalan as Director. It

is stated that in the company Petition a Prayer (ii) which has been referred in the appeal para 7 'O' reads as under: -

“ii) The Respondent company be directed to appoint Mahesh Kumar Jalan as the Director of the company in order to have equal management participation by the Jalan Group and also in view of the MOU dated 23.09.2006;

It is stated that this is the main prayer of the Company Petition and impugned order permitted such agenda to be included in the AGM which would amount to granting of the Prayer made in the Company Petition itself. It is stated that in the Company there are two groups, one is of the Jalan Group and other is Kedia Group.

The impugned order reads as follows:-

“ORDER

The grievance and submission of the Petitioner is that the agenda proposed by him should be taken into consideration for the AGM keeping in view that more than two weeks have already lapsed since his initial proposal for including it in the Agenda of the AGM. On 10.10.2019, the Tribunal had allowed the parties to submit their proposals, if any, for Agenda for the AGM. The petitioner/ Jalan group has proposed appointment of

Mr. Mahesh Kumar Jalan as Director of the Respondent Company in accordance with the Companies Act, 2013 and the Articles of Association of the Company. The Respondent/ Kedia group has not submitted any specific proposal. We therefore direct the AGM to be held by notice as per statutory requirements and inclusion of the agenda as proposed by the petitioner/ shareholders to be taken up in consideration along with other items. We apprehend that the AGM may not proceed without creation of impediments by either side and therefore it is directed that an independent Chairperson shall chair the AGM, supported by a Scrutinizer, assisting in Secretarial tasks inter-alia for proxy, attendance, polling, etc., and they shall jointly file a report before this Bench on the proceedings of the meeting. Accordingly, Mr. Shivangshu Naval, Advocate, High Court of Rajasthan (Mobile No. 9680007333) is appointed as the Chairperson and Mr. Pradeep Pincha, Practising Company Secretary (Mobile No. 982915753) is appointed as the Scrutinizer for the AGM. The said AGM shall be held at 03:30 PM on Saturday, 09.11.2019, at the Registered Office of the Respondent Company. If for reasons whatsoever, the AGM cannot be so held or concluded on 09.11.2019, then

the same shall be held or resumed, as the case may be, at 03:30 PM on Monday, 11.11.2019 at the Registered Office of the Respondent Company. The Agenda for the AGM shall be circulated afresh by email and Speed Post by the Respondent Company by 18.10.2019 and shall be immediately intimated/copied to the designated Chairperson and the Scrutinizer along with proof of dispatch to the members/shareholders. The Agenda shall also be copied to the counsels of the Petitioners and Respondents for onward communication to their clients. If the Agenda cannot be or has not been, circulated as directed, it shall be deemed to be the Agenda already sent earlier for the meeting scheduled on 30.09.2019 (except that dates, time and venue shall be as directed in this order) together with the addition of the proposal of the petitioner. Any communication received or sent by the Respondent Company in respect of the said AGM, prior or subsequent to this order, including inter-alia proxy forms, shall be intimated/copied forthwith to the Chairperson who shall be competent to seek originals thereof. The proceedings of the AGM shall be video recorded. The Chairperson and the Scrutinizer shall be paid an honorarium of Rs. 30,000/- and Rs. 25,000/-

respectively which expense shall be shared equally by the Petitioner and Respondent groups, besides equal sharing of videography expenses. The joint report of the Chairperson and the Scrutinizer shall be filed before the Tribunal within a week after conclusion of the AGM and a copy of the same shall be provided to the counsels for the Petitioners and the Respondents. No motion seeking change or removal or suspension of the Chairperson or Scrutinizer shall be moved by any party prior to or at the AGM. We direct that the conduct of the meeting and voting on all points on the Agenda shall be carried out, notwithstanding raising of any technical objection by either party or group, in a bid to stall the proceedings or otherwise. In the event of any objection whatsoever, by whomsoever, the same shall be decided by the Chairperson summarily, whose decision shall be final and who shall strive to complete the proceedings in an orderly manner. Any such issue shall be included in the report to be filed by the Chairperson and Scrutinizer. The Chairperson shall be empowered to regulate/restrict entry to the venue of the AGM to only concerned and authorized persons. All directors and members/shareholders of the Respondent Company are

directed to cooperate with the Chairperson and the Scrutinizer, including through issuance of necessary instructions of the staff, employees, consultants, concerned persons, or making available any/all records of the Company, or otherwise, for proper preparation for and holding of the AGM. Any report of non-cooperation, unruly conduct or obstruction of proceedings shall be viewed seriously. No party shall take any consequent action such as filing or any further steps as a sequel of the AGM till the report of the AGM has been considered by the Tribunal and appropriate directions issued. To come up for further consideration on 21.11.2019.”

On perusal of the above impugned order it clearly shows that the parties are having Strained Relations which is reflected from the impugned order where the Tribunal is taking precautions on various issues for the holding of the AGM. It has expressed apprehension of impediments by either side. The Tribunal has even directed video recording. It has given various directions for due holding of the AGM. It has also cautioned that any report of non-cooperation would be viewed seriously.

Looking at the impugned order, it appears to us that it would not be appropriate for us to interfere in the order passed by the Tribunal. It is in the interest of the Company that parties should co-operate. The Tribunal has given directions that no party shall take any consequent action such as filing or any further steps as a

sequel of the AGM till the report of the AGM has been considered by the Tribunal and appropriate directions issued. If the Tribunal while dealing with the Company Petition has the benefit of the majority in the AGM there would be nothing wrong. The ultimate decision however, in the Company Petition would be of Tribunal.

In this view of the matter, we find no reason to entertain this appeal.

The appeal is dismissed at the stage of admission.

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

[Kanthi Narahari]
Member (Technical)

[V.P. Singh]
Member (Technical)

ss/gc