

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No. 311 of 2018

IN THE MATTER OF:

ACHALA GOLD AGRITECH INVESTMENTS LIMITED

Between :

Mr. Om Prakash Avulla

...Appellants

Vs.

M/s Achala Gold Agritech Investment Limited & Ors

...Respondents

Present:

For Appellant : Mr. Ankit Roopanwal and Ms. Sudakshina Rathor, Advocates

For Respondents : Mr. P.Nagesh and Mr. Shri Dhruv Gupta, Advocates

With

Company Appeal (AT) No. 273 of 2018

U.V. Hari Prasada Raju & Ors.

...Appellants

Vs.

Achala Gold Agritech Investment Ltd. & Ors.

...Respondents

JUDGMENT

(3rd March, 2020)

Dr. Ashok Kumar Mishra, Technical Member

1. The Present set of two appeals have been preferred under section 421 of the Company's Act, 2013, against the common order dated 13.07.2018 passed by the National Company Law Tribunal, Hyderabad Bench ("NCLT"). Appellants and his associates (Appellants In Company Appeal (AT) No. 311 of 2018 and Respondents in Company Appeal (AT) No. 273 of 2018) hereinafter referred to as Appellant are the founder, core- promoter and together have a shareholding of 38.46 % number of equity shares and controlling stake in the Respondent Company and Respondents (Respondent In Company Appeal (AT) No. 311 of 2018 and Appellants in Company Appeal (AT) No. 273 of 2018) hereinafter referred to as Respondent who collectively own 61.54% share in the company. They both have preferred the above-mentioned Appeals against each other.

Accordingly, we are disposing of both the appeals as above through a common order.

2. The Appellants had filed the Company Petition bearing number C.P. No. 82 of 2015 before the NCLT U/s 397, 398 read with 402 and section 59 of the Companies Act, 2013 challenging the validity of the resolution passed in the purported Board Meeting dated 06.06.2014, the Extra-Ordinary-General Meeting on 30.06.2014 and the Annual General Meeting dated 08.08.2015 whereby the Board declared the allotment of 2000 shares of 2nd Respondent to Respondent 6 to 15 by splitting the shares belonging to Respondent no.2 and authorized Respondent No. 2 to sell the property of

1st Respondent Company and appointed Respondents 6 & 7 as directors of the company. The purpose of these actions is to increase shareholders on the side and support of Respondent no. 2 so that they could have majority on the Board as well as the number of shareholders to enable them to keep the Quorum to pass resolutions without informing the Appellants regarding the purported acts in relation to the company. It is further submitted that on 22.07.2014 Respondent no.2 filed purported MGT 14 along with an alleged extract of the said EGM and the said notice dated 06.06.2014 calling for EGM without actually convening the Extra Ordinary General meeting.

3. The Appellants moved before NCLT against the acts of Oppression and Mismanagement by the Respondent praying to declare the quoted above Meetings as invalid and to restrain them from convening any board meetings without proper representation of the Appellants and to stop them from selling the properties of the Respondent Company or create any encumbrances upon the property of the Respondent company. The NCLT vide its order dated 13.07.2018 approved the validity of the resolution passed in the purported Board Meeting dated 06.06.2014, the Extra-Ordinary-General Meeting dated 30.06.2014 and the Annual General Meeting dated 08.08.2015.
4. The Appellants submits that the respondent in blatant violation of section 162 of the 2013, Act appointed Directors in the purported Board Meeting without complying with the mandatory requirement of serving the notice

on the Appellants. The Appellants submits that the entire minutes of the meeting are forged by the respondents. It is submitted that only the transfer of 2000 shares of Respondent no.2 in favor of Respondent No.6-15 has enabled the quorum to conduct the meeting on 12.11.2015. It is submitted that filings made with the Registrar of Companies since August 2014 have been made by Respondent No.2 without any authorization from Board or shareholders of the company and that respondents are forging documents with a view to grab and usurp the properties of the company for his personal gain. Appellant submits that they had filed a complaint before ROC against Respondent No.2 and ROC marked complaint as management dispute.

5. The Appellant submits that further on 21.10.2015 he received notice calling for an EGM to be held on 12.11.2015. The sole agenda in the purported meeting was to seek consent of the members for selling the properties of the company.
6. The grievance of the Respondents in Company Appeal (AT) No. 273 of 2018 is that despite holding that no acts of oppression and management has been committed by the Respondents herein against the Appellants, the Tribunal has in Para 47 and 48 asked for EOGM to be held and directed that one among the two Appellants should be signatory to the sale agreements, if any and registered sale deed if any, thereby giving veto power to the Appellants in selling the property.

7. Respondent No.2 submits that he and his associates invested Rs. 1,12,00,000/- of which an amount of Rs. 52,00,000 was brought towards allotment of shares and balance amount of Rs. 60,00,000/- for purchasing the land in the name of the Respondent no.1 Company. Thus the respondent submits that properties purchased in the name of the company was from the funds invested by the Respondent no.2 and his associates.
8. The respondent submits that the share certificates to split and transfer the shares of the Respondent No.2 were very much in accordance with section 56 and other provisions of the Companies Act, 2013 and in accordance with Articles of Association of the Company. The Respondent further submits that NCLT observed that the splitting of shares of Respondent No.2 herein is not going to affect the percentage of shares of the Appellants herein. It is further stated that voting pattern in the General Meeting of the Company is based upon the shares held by the members and not by counting the number of members.
9. The Respondent further submits that the notice of the EGM was duly served upon the Appellants on 29.05.2014, where the Appellant No.1 signed the acknowledgement receipt of the notice on its behalf and on behalf of the Appellant No.2 who is the wife of the Appellant No.1. and in spite of the acknowledgment of the notice for the Extra Ordinary General Meeting dated 30.06.2014, none of the Appellants attended the same and

the shareholders present in the said meeting unanimously approved the sale of the assets of the company for day to day expenses of the company.

10. Respondent no.2 submits that the Appellants filed a complaint against the Respondent No.2 against the Board meeting dated 06.06.2014 and EGM dated 30.06.2014 alleging that the Appellants were not served notice to which the Respondent No.2 filed its detailed reply countering the Complaint. Thereafter, the ROC was pleased to dispose of the complaint filed by the Appellants.

11. The Respondents submits that Notice dated 13.07.2015 calling the Board Meeting for considering the Annual General Meeting dated 08.08.2015 was issued to all Directors of the Company including the Appellant No.1 and Appellant No.2 by courier but the Appellants refused to accept and receive the same through courier and courier receipts and tracking reports have been submitted accordingly.

12. It is observed that the all these suggests that Extra Ordinary General meeting as ordered by NCLT be convened after convening the Board Meeting and giving proper notice in accordance with provisions of Companies Act, 2013. After approval of the Board, the specific agenda with statement in accordance with section 102 of Companies Act, 2013 to consider the proposal to sell the property based on Auction through the newspaper and online modes be placed before Extra Ordinary General

Meeting. An Independent Administrator be appointed by the NCLT in order to have a proper voting by poll and not by show of hands and all material facts in relation to sale of the property be placed in the Extra Ordinary General Meeting and all the deliberations are properly recorded. Based on the decision of Extra Ordinary General meeting the sale of property of the Company, if approved, be acted upon. The requirement of the Appellant herein to be the joint signatory to an agreement to sell or to a sale deed according to the impugned order is therefore removed. The NCLT is to review Independent Administrator's report for proper disposal of the cases at hand. We accordingly remand back the matter to NCLT, Hyderabad.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

NEW DELHI

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