

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 101 of 2019

[Arising out of Order dated 22nd March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench in C.P. No. 07 of 2016]

IN THE MATTER OF:

Shri Venkatesh Koravadi

....Appellant

Vs

Viney Kaushal & Ors.

....Respondents

Present:

Mr. Antony R. Julian, Advocate for Appellant.

Mr. Madhu N. Rao, Advocate for Respondent Nos. 1-3.

Mr. George Pothan, Advocate for Respondent Nos. 4-9.

Mr. Raghunath, Mr. Basant and Mr. Raghav Mehrotra, Advocates for Respondent Nos. 5-8.

J U D G M E N T

[05th March, 2020]

JARAT KUMAR JAIN, J.

This Appeal has filed by Shri Venkatesh Koravadi against the order dated 22.03.2019 passed by National Company Law Tribunal, Bengaluru Bench in C.P No. 07/2016.

2. Brief facts of this case are that M/s World Schools Pvt. Ltd. (in short Respondent Company) was incorporated as a Private Limited Company on 24.01.2005 under the Companies Act, 1956 having their registered office at New No. 76, Old No.29, 1st Main Road, Chamrajpet, Bengaluru – 560 018. The Authorized Share Capital of the Company is Rs. 1,00,00,000/- (Rupees One

Crore only) divided into 10,00,000/- Equity Share of Rs. 10/- each and the paid-up capital of the Company is Rs. 95,58,060/-. The main objective of the Company was to establish and run in any part of India or elsewhere colleges or schools for imparting education to the students. Respondent Nos. 1, 2 & 3 are shareholders holding 52530, 39420 and 12269 equity shares respectively in Respondent Company. The sum and substance of the allegations in the Petition is that the Company has allotted shares at different premiums on different points of time; without proper notices, company meetings were convened; in the Auditor Report Financial irregularities were found and material information has not been supplied to Respondent Nos. 1, 2 & 3 (Petitioners). It is also alleged that some shareholders have formed a Trust and are misusing the funds of the Respondent Company.

3. It is stated that Respondent Nos. 1, 2 & 3 were removed from the Directorship of the Company by a resolution dated 07.03.2016, therefore, they have filed this Petition under Sections 241, 242, 210, 213 and 246 of the Companies Act, 2013 seeking the following reliefs:-

- “ 1) To pass an order that the actions of the contesting Respondents are oppressive in nature.*
- 2) To pass an order that the action of the contesting Respondents have not been approved by the other directors and the shareholders.*
- 3) To pass an order surcharging the contesting Respondents for their illegal actions and return back the misappropriated money*

of the Company and the Trust to the accounts of the Company and the Trust.

- 4) To pass an order directing the contesting Respondents to render proper accounts to the Company and the Trust.*
- 5) To pass an order for through inspection and investigation of the affairs of the Company and the Trust by appointing Inspectors through the Ministry of Corporate Affairs.*
- 6) To pass an order to appoint an Independent Auditor to investigate the dealings of the purchase of land and the amount received and spent by the Company and how it is booked in the accounts of the Company.*
- 7) To pass an order that the allotment made to the contesting Respondents without premium is null and void and consequently direct the Company to reduce proportionately the numbers of shares allotted to them and rectify the Register of Members.*
- 8) To pass an order declaring that the Board Meetings and General Meeting held without issuing notices to the Petitioner Directors are null and void and the decision taken on the said meetings will not bind the Petitioner Directors and other individual investors and shareholders, etc.”*

4. The Appellant herein and Respondent Nos. 4 to 9 herein resisted the Petition on various grounds including the ground of limitation.

5. National Company Law Tribunal has disposed of the Petition with certain directions. Being aggrieved, the Appellant filed this Appeal.

6. Heard Learned Counsel for the parties.

7. Learned Counsel for the Appellant submits that the impugned order is non speaking and a vague order. In the impugned order the statutory authority did not specify the time period for the completion and submission of the Investigation Report and also to whom they will submit the report. It is also submitted that National Company Law Tribunal has disposed of the Petition without considering the submissions made on behalf of the Appellant, in such circumstances it would be appropriate to remit the matter to National Company Law Tribunal for passing specific directions after considering the submissions made on behalf of the Appellant.

8. Learned Counsel for Respondents No. 1 to 3 are supporting the order. However, he is unable to point out the scope of enquiry and time fixed for submitting the report and to whom the report will be submitted. He is also unable to point out at present the stage of investigation before the statutory authorities.

9. We have gone through the impugned order the operative portion of the impugned order reads as under:

“12. The above facts and circumstances prima facie shows that the Respondents are resorting to acts of oppression and mismanagement which are further to be investigated by the Registrar of Companies and Principal Director of Income Tax

(Investigation) with whom the complaints are already pending submitted by the Petitioner. It would be just and proper to prevent the present management to perpetuate further acts of oppression and mismanagement and to prevent misuse of funds, by making an interim arrangement by appointing independent Chairman as to see the affairs of the Company should be conducted in accordance with law. Since R-1 Company deals with imparting education, it would be in the interest of justice to appoint an experienced person in education field. Therefore, we found Prof. (Dr.) O.V. Nandimath, Professor of Law & Registrar, National Law School of India University, Nagarbhavi, Bangalore-560242, is suitable for appointment of independent Chairman as he is having lot of experience in the education field.

13. The Petitioner has addressed a complaint to PMOPG portal complaint. As per the communication received from the PM's Office, it is stated that the Petitioner is stated to have made a complaint with the PMO Office with regard to the delay in making the investigation into the affairs of the Company by the Registrar of Companies, Principal Director of Income Tax (Inv.) and also the matter is pending disposal on the file of this Tribunal. However, the Tribunal could not get the latest developments on the stage of the investigation pending on the above complaints with the above authorities. In order to investigate into the complaints filed by the

Petitioner by the Statutory Authorities, it is also necessary to dispose of the instant Company Petition to complete the inquiry.

14. In the result, C.P No. 07 of 2016 is disposed of with the following directions:

1) We hereby appointed Prof. (Dr.) O.V. Nandimath, Professor of Law & Registrar, National Law School of India University, Nagarbhavi, Bangalore-560242, as independent Chairman for M/s. World Schools Private Limited to look after the affairs of the Company, till the investigations are completed by the Statutory Authorities;

2) We hereby fixed Rs. 75,000/- (Rupees Seventy Five Thousand Only) per month, which is to be reimbursed from out of funds of the R-1 Company;

3) The Company and Independent Chairman are at liberty to file Miscellaneous Application(s) in the Tribunal seeking further direction(s) if necessary;

4) The Petitioners are hereby granted liberty to file a fresh Company Petition, if they are ultimately aggrieved by action taken by the Statutory Authorities viz. Registrar of Company (ROC), Principal Director of Income Tax (Inv.).

5) We hereby direct Registrar of Companies (ROC), Principal Director of Income Tax (Inv.) to expedite the investigations and take appropriate action in accordance with law.

6) *Registry of Bengaluru Bench is directed to mark the copy of this order to the following authorities:*

- a. *Prof. (Dr.) O.V. Nandimath, Professor of Law & Registrar, National Law School of India University, Nagarbhavi, Bangalore-560242.*
- b. *Registrar of Companies Karnataka, E-Wing, 2nd Floor, Kendriya Sadan, Koramangala, Bangalore-560034.*
- c. *Principal Director of Income Tax (Inv.), C.R. Building (Annexe), III floor, Bengaluru.*
- d. *Prime Minister Office.*

10. From bare reading of this order it seems that the National Company Law Tribunal has appointed an Independent Chairman for interim arrangement till the investigation is completed by the Registrar of Companies and Principal Director of Income Tax (Investigation). However, the scope of enquiry time, for completing the enquiry and to whom the statutory authorities will submit the report, is not mentioned in the impugned order.

11. The impugned order is passed on 22.03.2019, till date about 11 months has lapsed, but Learned Counsel for the parties are unable to apprise the present stage of investigation before the statutory authorities.

12. In such a situation we are afraid that in absence of clear directions, the statutory authority will not be able to complete the investigation.

13. In such a situation we think it appropriate to remit the matter. Therefore, we set aside the impugned order and remit the matter to National Company Law

Tribunal with a request that after hearing the parties to pass fresh order without being influenced by this order.

14. We make it clear that we have not gone into the merits of this case and even we are not confirming that the investigation by the Registrar of Companies and Principal Director of Income Tax (Investigation) is required in this matter.

15. The Petition was filed somewhere in the month of September, 2016 and therefore we hope and trust that the National Company Law Tribunal shall make all endeavor to decide the Petition expeditiously.

Parties are directed to appear before the National Company Law Tribunal, Bengaluru Bench on 25.03.2020.

With the above directions, the Appeal is disposed of. However, no order as to cost.

Registry is directed to send the copy of this order to National Company Law Tribunal, Bengaluru Bench forthwith.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Ms. Shreesha Merla)
Member (Technical)

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