

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) No. 09 of 2021

[Arising out of order dated 27th November, 2020 passed by National Company Law Tribunal, Jaipur Bench, Jaipur, in CP No. 163/241-242/JPR/2020 & CP No. 164/241-242/JPR/2020 with IA No. 385/JPR/2020]

IN THE MATTER OF:

1. **Ashish Lodha,**
R/o 153, Road No. 10, Ashok Nagar,
Udaipur, Rajasthan **...Appellant No. 1**
2. **Manish Khatri,**
R/o 318-319, Bhupalpura,
Udaipur, Rajasthan **... Appellant No. 2**

Vs

1. **Indira IVF Hospital Pvt. Ltd.**
44, Amar Niwas, Opposite MB College,
Kumbharo Ka Bhatta,
Udaipur, Rajasthan- 313 001 **Respondent No. 1**
2. **TA Asia Pacific Acquisitions Limited,**
Regd. Office at
Maples Corporate Services Limited,
P.O. Box 309, Ugland House,
South Church Street,
George Town, Grant Cayman,
KY1- 1104
Cayman Islands,
Also at:
13th Floor, Birla Aurora Tower,
Dr. Annie Basant Road, Worli
Mumbai **Respondent No. 2**
3. **Dr. Ajay Murdia,**
R/o 9 Govindpura Colony,
Opp. M.B. College Ground,
Udaipur, Rajasthan **Respondent No. 3**
4. **Dr. Kshitiz Murdia,**
R/o 9 Govindpura Colony,
Opp. M.B. College Ground,
Udaipur, Rajasthan **Respondent No. 4**

5. **Mr. Nitiz Murdia,**
R/o 9 Govindpura Colony,
Opp. M.B. College Ground,
Udaipur, Rajasthan

Respondent No. 5

6. **Mr. Naresh Patwari**
44, Amar Niwas, Opposite MB College
Kumbharo Ka Bhatta,
Udaipur, Rajasthan,
Also at:
13th Floor, Birla Aurora Tower,
Dr. Annie Besant Road,
Worli, Mumbai.

Respondent No. 6

7. **Mr. Dhiraj Poddar**
44, Amar Niwas, Opposite MB College
Kumbharo Ka Bhatta,
Udaipur, Rajasthan,
Also at:
13th Floor, Birla Aurora Tower,
Dr. Annie Besant Road,
Worli, Mumbai.

Respondent No. 7

8. **Shree Kothari, Company Secretary,**
44, Amar Niwas, Opposite MB College
Kumbharo Ka Bhatta,
Udaipur, Rajasthan,

Respondent No. 8

9. **Delitte Haskings and Sells LLP,**
Indiabulls Financial Centre,
29th Floor, Tower, 3, Senapati Bapat Marg,
Elphinstone Mill Compound
Elphinstone (W),
Mumbai 400 013
Maharashtra

Respondent No. 9

Present:

For Appellants: **Mr. S.N. Mukherjee, Sr. Advocate, Mr. Ramji Srinivasan, Sr. Advocate, Mr. Vivek Tankha, Sr. Advocate, Mr. Shammak Mitra, Ms. Rajshree, Chaudhary, Mr. Shivkrit Rai, Ms. Swapnil Khatri, Mr. Pranaya Goyal, Mr. Utkarsh Kulvi, Mr. Chiranjivi Sharma, Mr. Pradhi Khatri, Mr. Rishabh Alva, Advocates.**

For Respondents: **Dr. U.K. Chaudhary, Sr. Advocate, Ms. Manisha Chaudhary, Mr. Naveen Dahiya, Mr. Mansumyer Singh, Mr. Aditya Bish, Mr.**

Satyam Roy Advocates for Respondent No. 1, 4 and 5.

Mr. Naukul Dewabm, Sr. Advocate, Mr. Rajendra Barot, Mr. Prabhav Shroff, Mr. Harshit Jaiswal, Mr. Sambit Nanda, Advocates for Respondent Nos. 2, 6 & 7

Dr. Harsh Surana, Mr. Yelop Singh and Dr. Ajay Murdia, Advocates for Respondent No. 3.

J U D G M E N T

(22nd March, 2021)

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The present appeal arises against the order dated 27th November, 2020 passed by the National Company Law Tribunal, Jaipur Bench, Jaipur (in short **NCLT**) in I.A. No. 385 of 2020 in Company Petition No. 163 of 2020 and 164 of 2020.

Brief Facts:

2. Learned Senior Counsel appearing for the Appellants submitted that the learned NCLT did not consider their plea seeking restraining the Respondents from holding Annual General Meeting (in short **AGM**) of the Company scheduled to be held on 01.12.2020 wherein the Appellants' removal from the Board of Directors has been proposed.

3. Learned NCLT did not stay the AGM scheduled to be held on 01.02.2020. However, the learned NCLT passed order at para- 10 as under:

..

“10. All the decisions taken in the Board Meeting dated 07.11.2020 and the decisions, if any to be taken in the Annual General Meeting, scheduled to be held on 01.12.2020 and all the consequential actions thereto, are subject to the outcome of the above referred CPs. Both the parties shall maintain status quo till the next date of hearing. List both the CPs along with CAs therein for final disposal on 18.12.2020.”

4. Aggrieved by the order of learned NCLT, the Appellants preferred the present appeal.

5. Learned Senior Counsel for the Appellants submits that the Respondent No. 1-Company was incorporated to take over the business of the Partnership Firm and the Appellants and Respondent Nos. 3 to 5 were running the business as a Partnership Firm and the Appellants were responsible for the phenomenal growth and expansion of the Business. Thus, Respondent No. 1 Company was incorporated to take over the business of Partnership firm. While, so, the Respondent No. 2 purchased 35% shareholding of the Respondent No. 1 Company and the Respondents systematically ousted the Appellants from the management and day to day affairs of the Respondent No. 1 Company with the sole ulterior motive of throwing the Appellants out of the Respondent No. 1 Company. Respondent Nos. 2 to 7 committed

gross irregularities by controlling Respondent No. 1 Company spending funds, syphoning of monies under the guise of CSR expenditure etc. The Appellants own 13% of shares each in Respondent No. 1 Company aggregating to 26% and being promoters/Directors on its Board, approached the Hon'ble NCLT by filing Company Petition No. 164 of 2020 under Sections 241 and 242 of the Companies Act, 2013 alleging oppressive acts of Respondents in the affairs of the Respondent No. 1 Company. While so, the 3rd Respondent also filed Company Petition under Sections 241 and 242 of the Companies Act, 2013 before the Hon'ble NCLT. On 16.11.2020 the Respondent No. 5 issued two Special Notices purportedly under Sections 115 and 169 of the Companies Act, 2013 proposing resolutions to be included in the ensuing AGM scheduled to be held on 01.12.2020 for removal of the Appellants as Directors from the Board of the Respondent No. 1 Company. The said notices were forwarded to the Appellants by Respondent No. 8 calling upon the Appellants to submit their respective representations to such proposed resolutions. The Appellants also received Addendum Notices dated 18.11.2020 where under the proposed resolutions for removal of the Appellants had been added as Item Nos. 3 & 4 respectively to the agenda for the said AGM. Aggrieved by the proposed resolutions, the Appellants filed I.A. No. 385 of 2020 dated 19.11.2020 before the Hon'ble NCLT and the Hon'ble NCLT, after hearing the Application passed the impugned order dated 27.11.2020.

6. Learned Senior Counsel for the Appellants submitted that the Hon'ble NCLT ignored the critical and urgent facts which were brought to the notice of the Hon'ble NCLT that despite the Appellants being Promoters/Directors of the Respondent No. 1 Company since its inception, the Controlling Respondents without giving an opportunity of being heard, removed the Appellants as Director (Finance) and Director (Operation) respectively in Respondent No. 1 Company. Further, the Respondents created false records and ousted the Appellants from the management and day to day affairs of the Respondent No. 1 Company and created a complete information block including blocking the access to the Appellants' own official e-mail account etc. Learned Senior Counsel for the Appellants further submitted that the learned NCLT failed to appreciate that the interim reliefs prayed by the Appellants to restrain the Respondents from holding the AGM on 01.12.2020 or removing the Appellants as Directors of the Respondent no. 1 Company. However, the learned NCLT passed an order of status quo as state supra. The interim reliefs prayed for by the Appellants were all for the purposes of maintaining the financial health of the Company, maintaining the goodwill and reputation of the Company and ensuring the accountability between the Members/Directors of the Company. The Respondents have misinterpreted and misused the impugned order and committed contemptuous acts such as shifting of the Corporate Office of the Company and denying inspection of the documents of the Appellants in their capacity as Promoters, Directors and shareholders of the

Company. Despite the status quo order, the Respondents removed the Appellants from the Board of Respondent No. 1 Company and committed contemptuous acts. Therefore, the Appellants have filed Contempt Application being C.A. No. 02 of 2021 before the Hon'ble NCLT for appropriate directions against the Respondents.

7. Learned Senior Counsel for the Appellants submitted that the present Appeal is without prejudice to the Contempt Application filed by the Appellants before the Hon'ble NCLT. In view of the above reasons, learned Senior Counsel prayed this Bench to set aside the purported illegal termination of the employment of the Appellants and sought directions to the Respondents to forthwith restore all rights, benefits, entitlements etc. The Appellants also prayed various interim reliefs in the Appeal.

8. Learned Senior Counsel appearing for the Respondents submitted that the Appeal is without any merit and liable to be dismissed at threshold.

9. It is submitted that the Hon'ble NCLT granted status quo order by way of impugned order dated 27.11.2020 and the Hon'ble NCLT posted the Company Petitions along with Company Applications for final disposal on 18.12.2020. Therefore, the learned Senior Counsel submitted that the Appellants instead of prosecuting the Company Petitions and the Application before the Hon'ble NCLT, approached this Appellate Tribunal without completely exhausting their remedies

available to them. Learned Senior Counsel for the Respondents submitted that the 3rd Respondent filed Company Petition being C.P. No. 163 of 2020 before the Hon'ble NCLT, Jaipur Bench, Jaipur alleging various acts of oppression and mismanagement committed by the Appellants in the Respondent No. 1 Company and sought various interim and final reliefs therein. The Respondents have taken a decision to remove the Appellants in accordance with law. They have not violated any law and therefore, the action of the Respondents are in accordance with law.

10. In view of the above submission, learned Senior Counsel for the Respondents prayed this Tribunal to dismiss the Appeal having devoid of merits.

11. Heard learned Senior Counsel appearing for the respective parties. The appeal is heard at the admission stage and therefore, there is no occasion to direct the Respondents to file their Replies/Counter Affidavits in this matter. The appeal is heard on merits and is being disposed as under.

12. The Appellants filed Company Petition being C.P. No. 164 of 2020 before the learned NCLT Jaipur Bench, Jaipur arraying the Company and other Respondents as party to the Company Petition. The Appellants have filed the Company Petition by invoking Sections 241 and 242 of the Companies Act, 2013 alleging certain acts of

oppression and mismanagement committed by the Respondents therein and sought various main and interim reliefs.

13. The main relief sought in the Company Petition is at page 212 of Volume-1 of the Appeal Paper Book and the interim reliefs are sought at page 215 of the Appeal Paper Book.

14. From the perusal of the interim reliefs in the main petition, it is evident that the Appellants sought interim reliefs viz, stay the proposed Board meeting scheduled to be held on 07.11.2020, stay the operation of any purported resolutions passed in the Boarding Meeting of 07.11.2020, stay the operation of any purported termination and sought an order directing the Respondents to forthwith restore all rights, benefits and entitlements etc. and mainly sought a direction to reinstate the Appellants/Petitioners as Head of Finance and Head of Operations of the Respondent No. 1 Company respectively. The Appellants also sought various other interim reliefs in the main petition. The Appellants moved I.A. No. 385 of 2020 inter alia praying the Hon'ble Tribunal to stay purported Board Meeting dated 07.11.2020, stay the AGM of the Respondent No. 1 Company scheduled to be held on 01.12.2020, stay the Special Notice dated 16.11.2020, appoint independent Chairman/Administrator to take charge and look after the affairs of the Respondent No. 1 Company and supercede the Board of Respondent No. 1 Company etc.

15. The Appellants also sought similar reliefs in this Appeal at page 70 of the Appeal Paper Book, namely to stay the proposed Board Meeting of the Respondent No. 1 Company scheduled to be held on 07.11.2020, stay the effect and operation of any purported resolution passed at the Board Meeting dated 07.11.2020, pass an order directing the Respondents to forthwith restore all rights, benefits and entitlements etc., reinstate the Appellants as Head of Finance and Head of Operations of Respondent No. 1 Company, appoint an independent Chairman/Administrator to take charge of the affairs of the Respondent No. 1 Company etc.

16. From the careful perusal of the interim reliefs sought by the Appellants in the Company Petition being C.P. No. 164 of 2020 at page 215 and in the present Appeal at page -70 of the Appeal Paper Book are ditto. Further, the Appellants also sought similar reliefs in I.A. No. 385 of 2020. However, we are not going into the merits of the case since the learned NCLT posted the Company Petitions filed by the Appellants and 3rd Respondent being C.P. No. 164/2020 and 163/2020 and I.A./C.As filed by the respective parties before the learned NCLT. The learned NCLT in the impugned order categorically stated at para-9 of the impugned order which is reproduced hereunder:

...

“9. In view of the levelling of allegations and counter allegations of very serious nature by both

sides, it is necessary to examine the same in detail, after giving opportunity to both sides to complete their pleadings. Therefore, we issue notices in both the CPS and CAs. The learned counsel for the petitioners in both the CPs shall collect the notices from the Registry and serve the same on the respondents along with copy of petition, entire paper book and copy of this order either through speed post or e-mail and shall file affidavit of service within one week. The respondents in both the CPs and CAs, shall file their respective relies within two weeks from today with copy advance to the counsel opposite. Rejoinder, if any, be also filed within one week thereafter with copy advance to the other side.”

..

17. Learned NCLT directed the parties to complete pleadings by filing Replies/Rejoinders. Further, the learned NCLT ordered to maintain status quo till the next date of hearing. The status quo order need to be adhered to by the respective parties with respect to the decision taken in the Board Meeting dated 07.11.2020 and any decision taken in the AGM which was held on 01.12.2020.

18. Further, the learned NCLT observed that all the actions taken therein are subject to the outcome of the Company Petitions.

19. We are of the view that the learned NCLT protected the interest of the parties including the Appellants. The learned NCLT rightly observed that when the allegations made by the parties in their Company Petitions are serious in nature and without completing the pleadings, it cannot examine the same in detail. Hence the learned NCLT decided to hear the Company Petitions and Company Applications after completing the pleadings. Therefore, the reliefs sought by the Appellants in CAs as well as in CP are pending for consideration by the learned NCLT.

CONCLUSION:

20. We are of view that the Appeal is premature for the reason that the learned NCLT is seized of the matter. Further, it is on the record that the Appellants filed the Contempt Application under Section 425 of the Companies Act, 2013 which is also pending for consideration and the copy of the Company Application is filed before this Tribunal at page – 1592 in volume-9.

21. We conclude that the Appeal is devoid of merits and liable to be dismissed. Accordingly, the Appeal is dismissed. No orders as to cost.

**[Justice Jarat Kumar Jain]
Member (Judicial)**

**(Kanthi Narahari)
Member(Technical)**

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