

NATIONAL COMPANY LAW TRIBUNAL
VACATION BENCH
NEW DELHI

C.P NO. 114 (ND)/2017
CA NO.

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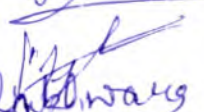
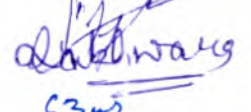

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

Ms. Deepa Krishan
Hon'ble Member (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE VACATION BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 07.06.2017

NAME OF THE COMPANY: Heng Zhang & Anr.
Vs.
Huiyuda Technology India Pvt. Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 241 (1) – 242 (4).

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1	RANA RANJIT SINGH	ADVOCATE	PETITIONERS	
2	U.K. SINGH	ADVOCATE	RESPONDENTS	
3	NEHA LAKHWARA	CS	RESPONDENTS	
4	C. BALOONI	Company Prosecutor	FOR R.D.P.R.	

ORDER

On the request made by the learned Counsel for the Petitioner, the name

~~of Respondent No. 4 stands deleted.~~

Contd....2/-

Petition has been mentioned.

Learned Counsel for the Petitioner has argued that in terms of Memorandum of Understanding dated 28.07.2017, the Petitioners were inducted as Directors on 03.08.2016 and were made permanent Directors. The shareholding of the petitioners jointly is 49% and that of the Respondents 2 & 3 is 51%. In an agenda issued on 12.05.2017, Extra-ordinary General Meeting had been convened on 09.06.2017 with the proposed Resolution which are as under:

"ITEM NO. 1: ALTERATION OF THE ARTICLES OF ASSOCIATION

To consider the matter and if thought fit, to pass with or without modification the following resolutions as Ordinary Resolutions:

"RESOLVED THAT pursuant to the provisions of Section 14 and all other applicable provisions, if any, of the Companies Act, 2013 read with Companies (Incorporation) Rules, 2014 (including any statutory modification or re-enactment thereof for the time being in force), the draft regulations contained in the Articles of Association as submitted to this meeting be and are hereby approved and adopted by the members of the Company in substitution, and to the entire exclusion, of the regulations contained in the existing Articles of Association of the Company with immediate effect.

RESOLVED FURTHER THAT Ms. Manvee, Director of the Company, be and is hereby authorized to do all acts, deeds, things and to take such actions as may be necessary, proper or expedient to give effect to this resolution."

Handwritten signature and initials in blue ink, located at the bottom left of the page.

ITEM NO. 2: REMOVAL OF DEADLOCK IN THE COMPANY

To consider the matter and if thought fit, to pass with or without modification the following resolutions as Ordinary Resolutions:

“RESOLVED THAT in super session to all other resolutions passed earlier by the Board of Directors in their meeting in respect of the signing power in Current Bank Accounts of the Company maintained with any Bank(s), be and is hereby changed.

RESOLVED FURTHER THAT consent of the members of the Company be and is hereby accorded that bank is authorized to honour all cheques signed a) Solely by **Mr. Chandrandu Kumar** or **Ms. Manvee**.

RESOLVED FURTHER THAT the aforesaid bank be and is hereby instructed to honour all cheques, promissory notes and other order drawn by and all bills accepted on behalf of the company whether such account be in credit of overdrawn and to accept and credit to the account of the company all money deposited with or owing by the bank or any account or accounts at any time or times kept or to be kept in the name of the company and the amount of all cheques, notes, bills other negotiable instruments order or receipts provided they are endorsed/ signed as above on behalf of the company and such signature (s) shall be sufficient authority to bind the company in all transactions between the bank and the company including, those specifically referred to herein.

RESOLVED FURTHER THAT this resolution shall be communicated to bank and the above bank be and is hereby authorized to act on the instructions of the Company, so given relating to the account.



RESOLVED FURTHER THAT Mr. Chandrandu Kumar, Director of the Company be and is hereby authorized to do all such acts, deeds and things as may be necessary, for day to day business activities and operation of the Company, and to sign, modify all such papers, documents as may be required in this regard.”

According to the learned Counsel, this proposed agenda again has been supplemented by issuance of addendum proposing two other items on 29.05.2017. The aforesaid two items are for removal of both the Petitioners as Directors and it reads as under:

“ITEM NO. 3: To remove Mr. Heng Zhang (DIN: 07582094) from the Directorship of the Company

To consider the matter and if thought fit, to pass with or without modification the following resolutions as Ordinary Resolutions:

“RESOLVED THAT in furtherance to the Special Notice given by a member of the Company and pursuant to Section 169 read with Section 115 and other applicable provision, if any, of the Companies Act, 2013 and rules made thereunder, including any statutory modification(s) or re enactment(s) thereof, for the time being in force, **Mr. Heng Zhang (DIN: 07582094)**, Director of the Company be and is hereby removed from the directorship of the Company.

RESOLVED FURTHER THAT Mr. Chandrandu Kumar (DIN:03067477) Director of the Company, be and is hereby authorized to digitally sign and file e-Form DIR-12 or any other Form or return, for the removal of the said director, with the Registrar of Companies, NCT of Delhi & Haryana and to execute and sign any paper or document and to do all such acts, deeds or things, as may be incidental and necessary in this regard”.

ITEM NO. 4: To remove Mr. Yinhui Pan (DIN: 07582103) from the Directorship of the Company

To consider the matter and if thought fit, to pass with or without modification the following resolutions as Ordinary Resolutions:



“RESOLVED THAT in furtherance to the Special Notice given by a member of the Company and pursuant to Section 169 read with Section 115 and other applicable provision, if any, of the Companies Act, 2013 and rules made thereunder, including any statutory modification(s) or re enactment(s) thereof, for the time being in force, Mr. Yinhui Pan (DIN: 07582103), Director of the Company be and is hereby removed from the directorship of the Company.

RESOLVED FURTHER THAT Mr. Chandrandu Kumar (DIN:03067477) Director of the Company, be and is hereby authorized to digitally sign and file e-Form DIR-12 or any other Form or return, for the removal of the said director, with the Registrar of Companies, NCT of Delhi & Haryana and to execute and sign any paper or document and to do all such acts, deeds or things, as may be incidental and necessary in this regard”.

We called upon the Respondent to explain why the management is being taken over by Respondent Nos. 2 & 3 to the exclusion of the petitioners who have 49% of shareholding; firstly, by snatching their signing power and then by removing both the Petitioners as Directors.

The only answer given by the Counsel for the Respondent is that the affairs of the Company are not being run properly. The terms and conditions of the MOU dated 28.07.2016 provide for convening of Board Meeting only if 100% attendance is available. The signing power jointly by the Petitioner Group and Respondent nos. 2 & 3 group has not worked out as the Petitioners have remained absent from India for the last 2 ½ months. Although no sufficient

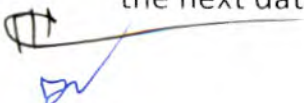


instances are quoted, yet learned Counsel for the Respondent requested for some time to file detailed reply to disclose all the facts.

Keeping in view the shareholding of the Petitioners and the implicit understanding of their continuation as Director, we are of the view that the proposal to remove them ^{as} Directors, completely taking over the management alongwith snatching their signing power on cheques would be *prima facie* unfair, inequitable and oppressive. Therefore, the convening of meeting on 09.06.2017 is stayed till the next date of hearing. However, we further direct the Petitioner No. 2, Mr. Y. Pan, a Director in the Respondent No. 1 company shall remain present to attend any Board Meeting or sign any cheque. All the cheques for signature of petitioner no. 2 be sent on the following address:

House No. K-2062, C.R. Park,
New Delhi.

If Petitioner No. 2 find the signing of cheque in the larger interest of the company, then he may proceed to sign within 48 hours. If there is any objection to sign any cheque then it shall be returned within 48 hours to Respondent No. 1 after recording reasons for doing so. The matter shall be raised before us on the next date of hearing.



We further direct that immovable assets of the company-respondent No. 1 be not transfer till the next date of hearing.

Learned Counsel for the Respondent requests and is granted four weeks time to file reply. Let the reply be filed within four weeks with a copy in advance to the learned Counsel for the Petitioner. Rejoinder, if any, be filed within two weeks thereafter, with a copy in advance to the learned Counsel opposite.

List for further consideration on 9th August, 2017.

Sd—

(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

Sd—

(DĒEPA KRISHAN)
MEMBER(TECHNICAL)

07.06.2017

~~V.Sethi~~
V.Sethi