

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No.150/(MAH)/2017
M.A. No. 352/2017

CORAM:

Present:





SHRI M. K. SHRAWAT
MEMBER (J)

SHRI BHASKARA PANTULA MOHAN
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 16.10.2017

NAME OF THE PARTIES: Mr. Manish Majitha & Anr
V/s
India Farmers Pvt. Ltd

SECTION OF THE COMPANIES ACT: 397/398 of the Companies Act 1956
and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
1.	B. B. Parikh vs. Dr. Deepthi Mukesh	Adv. for Respondents	 
2.	Deeksha Tani i/b Hariani and CO.	Adv for Petitioner	
3.	Counsel Mr. Karl Tamboly i/b Hariani and CO.	"	

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ORDER

CP 150/241-242/MB/MAH/2017

1. There are two Miscellaneous Applications (**MA 352/2017** and **MA 271/2017**) and one Praecipe pending for disposal. All of them have connected grievances can be said to be dovetailed and arising from the passing of an Interim Order dated 02.05.2017, hence herein below disposed of by this common order.
2. From the side of the Petitioner (of the main Petition) a Praecipe is moved on 12.10.2017 wherein stated the facts and the Prayer as follows:-

*"On 23 August 2017 on hearing the MA 271 of 2017 taken out by Respondents in the captioned matter, the Petitioners urged the Hon'ble Tribunal to extend the restraining orders passed on 2 May 2017 till the hearing of the captioned matter. The same is reserved for orders. The Respondents taking advantage of clause 4(g) of the said interim order have without giving notice to the Petitioners called for a board meeting on 25 September 2017 and passed purposed resolution superseding any resolutions that were passed by the Petitioners during their instatement as directors in Respondent No.1. Respondent No.2 unilaterally addressed a letter dated 7 October 2017 to Respondent No.1 advocates calling upon them not to appear in the pressing revenue matter thereby prejudicing the interest of the Respondent No.1 Company (**copy enclosed**). Infact, during the pendency of the said interim order Respondent No.1 has unilaterally addressed a letter dated 22 May 2017 to the Assistant Registrar of Societies giving no objection to use the property of Company as administrative office for Esplanade Education Society Trust. (**copy enclosed**). Further, Respondent No.2 received the Collectors notice to Company on 24 August 2017 for hearing fixed on 8 September 2017 and did not inform the Petitioners about the same. It was only on the morning of 8 September 2017, the Petitioners were orally informed about the hearing from the office of Collector. The Respondents have no knowledge about the proceedings relating to Respondent No.1's land and it is always the Petitioners who had dealt with the same. At the hearing before Collector, Respondent No.3 tried to hijack the hearing by claiming that Petitioner No.1 is not the authorised representative of Respondent No.1. In view of the objection taken by Respondent No.3, the Collector adjourned the hearing for a period of 30 days to decide the issue of who is the authorised representative of Respondent No.1. Hence, the Collector instead of deciding the subject matter of its notice, has deviated from the same. The recording of the hearing that took place on 8*

September 2017 is recorded in the Roznama dated 8 September 2017. (**copy enclosed**). On the same day, Respondent No.2 unilaterally claiming to represent the Respondent No.1 addressed a letter to the Collector seeking four weeks' time. (**copy enclosed**). Therefore, at present the same urgency remains in revenue matter and the same issue has arisen with regard to the representation of the company as was argued on 23 August 2017. Hence, the urgency.

In view of the above, The Hon'ble tribunal **BE PLEASED** to keep in abeyance all resolutions passed after 31 August 2017 and continue the order dated 2 May 2017 till the hearing and final disposal of the Company Petition."

3. Along with this Application, there is a letter of 07.10.2017 written by the Managing Director from the side of the Company M/s. India Farmers Pvt. Ltd. wherein it is stated that Mr. Manish Majithia and Mrs. Amritha Majithia were temporarily reinstated vide an order of the NCLT dated 2nd May 2017 and because that order was not extended, hence the said two persons could no longer act as Director or exercise any power as Director. The said letter addressed to an Advocate alleged to have been appointed by Mr. Manish Majithia reads as under:-

"As you are aware that by order dated 02.05.2017 Mr. Manish Majithia and Mrs. Amritha Majithia temporarily were reinstated as directors of the company till 30.08.2017. Since there being no further extension they no longer act as directors of the company or can exercise any power as the directors of the said Company. Prior to 30.08.2017, Mr. Manish Majithia posing himself as directors appointed you, as the advocates for the company to be representing in the Revenue Appeal No. 766 of 2004 before Hon'ble High Court. The legitimate Board of Directors of the company in its meeting held on 25.09.2017 passed a resolution superseding any resolutions that may have been passed by Mr. Manish Majithia and Mrs. Amritha Majithia unilaterally appointing you as an attorney of the company in the captioned appeal, the company has decided to appoint its own advocate in your place and therefore you are requested not to cause any appearance on behalf the company in the pending revenue Appeal No.766 of 2004 before the Hon'ble High Court. Though your appointment by Mr. Manish Majithia was ipso facto void however for the sake of propriety we shall forward you a Vakalatnama in favour of newly appointed advocate in your place and request you to kindly subscribe your 'no objection' thereon. In the meanwhile you are requested to fix an appointment to

hand over possession of aforesaid proceedings to enable the company to agitate the issue successfully."

4. In the light of the above two references we have also perused MA 271 of 2017 in CP No.150 which was argued on 23.08.2017 moved from the side of the Respondent (of the main Petition) and the Prayers made therein are reproduced for ready reference:-

"

- a) *The Petitioners be directed to act within the compass of the order dated 02.05.2017.*
- b) *The Board meetings which culminated into the adjourned Board of Director meeting dated 12.07.2017 are held in violation of the order dated 02.05.2017 and therefore be declared illegal.*
- c) *Various resolutions purportedly passed on the adjourned Board meeting dated 12(sic).07.2017 and more particularly minuted in the alleged minutes of the Board of Director dated 12.07.2017 as circulated by the Petitioners being ipso facto void not liable to be implemented.*
- d) *For an order of injunction restraining Petitioners from acting any of the resolution passed in the meeting dated 12.07.2013 and also as directors beyond the scope of the order dated 02.05.2017."*

5. Along with the said Application (MA 271 of 2017) there is a mention of Notice of Board Meeting dated 11.06.2017 intimating the holding of Directors' Meeting on 19.06.2017. The contention is that due to the non-cooperation from the side of the Respondent, the business activities of the Company are adversely affected.
6. Apropos to MA 352/2017 the allegations are that the Petitioners (of the Petition) have unilaterally taken certain steps without the knowledge of the Respondent 2 Mr. Navinchandra Majithia; such as obstruction on the road etc.; hence be directed to restrain from doing such act in future and to maintain the *status quo*. It is alleged that on temporary reinstatement they are misusing the directions.
7. On hearing both the sides and on perusal of the relevant material available on record, we are of the view that the rival parties are making allegations and counter-allegations of not following the order of the NCLT, Mumbai Bench. In the Order of 2nd May 2017, certain directions were clearly given that no single

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Director can act or represent the Company individually. On one hand, the Petitioner (of the Main Petition) is moving ahead with the project of the Company without intimating the other side and on the other hand, the Respondent is also removing one of the Advocate, appointed by the Petitioner without intimating the other side.

8. Vide an Order dated 02.05.2017 it was explicitly mentioned that both the sides shall maintain harmony in conducting the business activity of the Company and that the Company shall not convene or hold any meeting without proper service of Notice to the either side. Further a direction has been given that no Director shall act on behalf of the Company without having consent in writing of the Other Party. No Director was eligible to represent or file application before any other under one signature.
9. In our opinion both the sides have not followed the Order of 02.05.2017 in its letter and spirit. We therefore hold that on due consideration of the circumstances it is advisable that no Party shall deal with the affairs of the Company single-handedly. Both the Parties are expected to carry out the directions of the said Order of the NCLT and in case of defiance, suitable action as per law may get attracted.
10. Since we are giving direction in continuation of the order of 02.05.2017 of this Bench, hence the natural consequence is that the scope of the said order hereby gets extended. An additional direction is added so as to maintain the harmony that for every future unilateral action or decision either by the Petitioner or Respondent must put to the knowledge of this Bench and take permission, if law permits. In the result, the Praecipe as well as MA 271, ^{And MA 352 of 2017} ~~both~~ are partly allowed on the terms listed hereinabove. *mes*

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)

Date : 16.10.2017

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Sd/-

M.K. SHRAWAT

Member (Judicial)