

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH

IA NO. 46 of 2017  
Diary No. 687/2017

In  
C.P.No.25/271/272/GB/2017

Under Section 271, 272 of the Companies Act, 2013

In the matter of:

Mukesh Goel.

... Petitioners

-Versus-

Goel Entrade Pvt. Ltd.

... Respondents

**Coram:**

Hon'ble Mr. Justice P K Saikia, Member(J)

.....

**ORDER**

**Date of Order: 29<sup>th</sup> November 2017.**

**Diary No. 687/2017**

Ms S. Bharti, Mr R.K. Bhatra, Mr J.K. Choudhury, Mr M. Kashyap & Ms M. Hore, learned Advocates have appeared on behalf of the applicant/petitioner.

2. This is an application filed under Section 271/272 of the Companies Act, 2013 (as notified vide No.S.O.3677(E) dated 7<sup>th</sup> December, 2016) seeking the following reliefs:

- “(a) pass an order declaring the appointment of Mr Rochak Goel bad in law and void ab initio;
- (b) pass an order restraining Mr Rajesh Goel/Rochak Goel and/or any his any other Company/nominee/individual/employee/servants from representing/authorizing himself as the authorized representative acting on behalf of the Respondent Company or in any manner



*representing/voting/passing any resolutions and/or filing any forms before Ministry of Corporate Affairs;*

- (c) pass an order maintaining status quo in the affairs of the Respondent Company to the effect that no change in management decision be taken without prior permission from this Hon'ble Tribunal;*
- (d) pass any other order or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice. "*

3. Registry has examined the application and found that the application has been filed in accordance with the prescription of law and the Rules framed thereunder.

4. Perused the application and the connected company petition. The application is admitted. Registry is directed to do the needful in that regard.

5. Heard Ms S. Bharti, learned Advocate on behalf of the applicant/petitioner. For ready reference, facts which gave rise to the connected company petition are narrated in paragraphs 3, 4, 5, 6 & 7. For ready reference, said paragraphs are reproduced below:

*"3. Amidst all this, Mr Rajesh Goel to gain nefarious control over the Respondent Company appointed his son, Mr Rochak Goel as an additional director of the Respondent Company w.e.f. 22.09.2017 and passed a resolution singly without even convening a meeting of the Board of Directors to this effect. That it is pertinent to note that the Petitioner has not received any notice of the purported Board Meeting. It is relevant to note that the entire process of the appointment of Mr Rochak Goel as the director of the Respondent Company is mere façade and sham and the same could not have been done single handed-ly by Mr Rajesh Goel, without convening the meeting of the Board of Directors. A Copy of the Form DIR-12 along with the appointment letter and the Resolution of Rochak Goel is annexed with the winding Up petition and marked as Annexure A-18 (Colly).*

*"4. That it is not out of place to mention that Mr Rajesh Goel has appointed Mr Rochak Goel as an additional Director of the Respondent Company without even consulting the Petitioner/Applicant who is one of the two directors on the Board of the Company. Further it is apprehended that Mr Rochak Goel is being inducted only to replace and usurp the role and responsibilities of the Petitioner/Applicant in the Respondent Company which is now evident from the present state of affairs of the Respondent Company. Mr Rochak Goel is the son of Mr Rajesh Goel and would only be his eyes and ears and shall be acting as a puppet in his hands for causing harm and injury to the interests of the Petitioner/Applicants herein.*

*"5. That the Petitioner being unaware of this unilateral and arbitrary action of appointment of Mr Rochak Goel as the additional director of the Respondent Company by Mr Rajesh Goel attended the scheduled AGM of the said Goel Marketing (of which the Respondent Company is a significant shareholder) which was called on 26.09.2017 whereby Mr Rajesh Goel took arbitrary decisions even on behalf of the Respondent Company and the Petitioner was fraudulently informed by Mr Rajesh Goel in AGM dated 26.09.2017 of Goel*



Marketing that he has been removed from the directorship of the Respondent Company for the reason that the Petitioner/Applicant has vacated the office of director of the Respondent Company under Section 167(1)(b) of the Act, by absenting himself from all the meetings of the Board of directors held during the period of 12 months. It may be noted that the Petitioner/Applicant neither received notice of the Board meeting in which the said resolution was passed nor given an opportunity to represent against the said action of the Respondent Company.

"6. That, aggrieved by the fraudulent and illegal conduct of Mr Rajesh Goel and witnessing his unilateral and arbitrary actions to gain nefarious control over Goel marketing as well as to gain control over Respondent Company, the Petitioner wrote a letter to the Respondent company calling upon Mr Rajesh Goel to provide with the valid documentation stating the grounds on which Mr Rajesh Goel appointed himself as the authorized representative of the Company in the AGM in spite of sending the circular resolution in accordance with Section 113 of the Act to Mr Rajesh Goel as Director of the Company for appointment of an authorized representative for attending the Annual General Meeting of Goel Marketing held on 26.09.2017 ("AGM") and vote threat, but there was no response of the said Circular Resolution. A copy of the Letter dated 27.09.2017 sent by the Petitioner/Applicant for unauthorized voting is annexed with the winding up Petition and marked as Annexure A-20.

"7. That Mr Rajesh Goel on behalf of the Respondent Company even went on and filed the form DIR-12 dated 29.09.2017 vide SRN G54398953 in respect of vacation of the office of director of the Respondent Company by the Petitioner/Applicant. However, the Registrar of Companies informed the Respondent Company vide its email dated 05.10.2017 informing the defect in the manner in which the Form DIR 12 for the removal of the petitioner has been filed and the Petitioner/Applicant filed its response dated 18.10.2017 to the Registrar of Companies. A copy of the email dated 05.10.2017 sent by the MCA Administrator is annexed with the winding up Petition and marked as Annexure A-22. A copy of the response dated 18.10.2017 along with the supplementary letter and Corrigendum dated 23.10.2017 is also annexed with the winding Up Petition and marked as Annexure A-23 (Colly)."

6. The applicant/petitioner now submits that if the relief sought for in this application is not granted, then the affairs of the company will be conducted in a manner highly prejudicial to the company as well as the other stakeholders in the field including the applicant herein.

7. I have considered the submissions in the light of the materials on record including the averments made in the connected company petition and documents annexed therewith.

8. On hearing the learned Advocate for the applicant/petitioner, I am of the opinion that the applicant/petitioner has, prima facie, made out a case which shows that the dispute in the present proceeding needs adjudication. I am also of the opinion that if the reliefs, sought for, in this application are not granted, then, there is a chance the applicant/petitioner would suffer loss which cannot be compensated in terms of



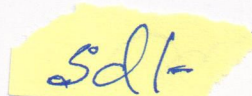
money. Therefore, in my view, the balance of convenience between the parties can be maintained if the reliefs, sought for, in this application are granted.

9. Considering all the aspects of the matter, I direct the non-applicants/respondents to maintain status quo, as on today, in respect of the assets as well as the shareholding in Goel Marketing and Distribution Company Limited and also in regard to the composition of the Board of Directors until further order(s).

10. The applicant is directed to send copies of the application as well as the connected documents to the non-applicants/respondents by Registered Post with A/D and also by email. Steps to be taken within a period of five days from today.

11. On receipt of the application and the connected documents, the non-applicants/respondents may file reply within three weeks from the date of receipt of the application and annexed documents supplying simultaneously copies thereof to the applicant. The applicant, if so advised, may file rejoinder to the reply within ten days thereafter supplying simultaneously copies thereof to the non-applicants/respondents.

12. List this matter on 08.01.2018.



Member (Judicial)  
National Company Law Tribunal,  
Guwahati Bench,  
Guwahati.

nkmm