

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

CP NO. 150/241,242,244/NCLT/MB/MAH/2017

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

CP NO. 150/241,242,244/NCLT/MB/MAH/2017

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of India Farmers Private Limited, A Company incorporated under the provisions of the Companies Act, 1913 having its Registered Office at 605, 6th Floor, Crescent Royale, Off. Andheri Link Road, Behind Hyundai Showroom, Andheri (W), Mumbai-400 053, having CIN No. U01110MH1950PTC008084.

MANISH N. MAJITHIA & ANR.

....Petitioners.

AND

INDIA FARMERS PRIVATE LIMITED & ORS.

....Respondents

PRESENT ON BEHALF OF THE PARTIES

FOR THE PETITIONER

Counsel Mr. Karl Tanebaly alongwith Ms. Deeksha Jani Advocate for Petitioners.

FOR THE RESPONDENTS

Mr. B.B. Parekh Advocate for the Respondents.

INTERIM ORDER mes

Date of Pronouncement: 2nd May, 2017

1. A Petition invoking the provisions of Section 241, 242 and 244 of the Companies Act, 2013 has been filed before NCLT, Mumbai on 12th of April, 2017, containing allegations of Oppression and Mismanagement purported to be committed by the Respondents. Thereafter Petitioner has circulated a Praecipe dated 18th April, 2017 seeking an early hearing on Interim Relief sought in the main Petition, for ready reference reproduced below the portion pressed before the Bench :-

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" (a) That pending the hearing and final disposal of the company petition, this Hon'ble Tribunal be pleased to pass an injunction against the Respondents from acting in furtherance of the alleged EOGM dated 28th October 2016 as the resolutions allegedly passed thereat (Exhibit "Z")."

2. In the Praecipe as also during the Arguments Learned A.R. Mr. Karl Tanebaly has pleaded that the Petitioner had been removed illegally from the Directorship from the Company (R-1) through a Meeting held on 28.10.2016. Side by side Respondent Nos. 3 and 4 have been inducted as Directors. An apprehension has been expressed that during the pendency of the Petition the property of the Company may be alienated or a third party right may be created. The Learned A.R. has stated that there is a big parcel of land of the Company. One more apprehension is that the Respondents may misuse the signing Authority granted as per the said Resolution for operating of the Bank Accounts. It is pleaded that, prima facie the Petitioner has a strong case therefore, balance of convenience demands an immediate injunction to stop the Respondents in implementing the impugned Board Resolution.

3. From the side of the Respondents Learned A.R. Mr. B.B. Parekh appeared and opposed the prayer of injunction on the ground that the Company is run by Family Members and the Petitioners are planning to take the advantage of the advanced age of R-2 to grab the control of the Family Company. Learned A.R. has explained that R-2 viz. Mr. Navinchandra Majithia has two sons namely Mr. Manish Majithia (Petitioner) and Mr. Jayesh Majithia (R-3). Learned A.R. has pleaded that there are innumerable misdeeds of the Petitioner to be highlighted during the trial of the case hence no temporary relief be granted to the Petitioner. Even after the removal the Petitioner continues to represent himself as Managing Director before various authorities which proves his malafide intention. Learned A.R. has tried

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to explain that by following due legal procedure the Petitioners have been removed from the Directorship of the Company which was duly informed to ROC Office. A copy of the Master Data downloaded from MCA Website is mentioned. It has also been informed that the Petition was served in the recent past on the Respondents, hence a Reply is yet to be filed, hence till the Reply is filed no injunction may please be granted, pleaded by Learned A.R.

4. Heard both the sides at some length and perused the contents of the Petition. At the outset it is worth mentioning that any of the observations made in this Preliminary Order shall not be considered as an opinion on the issues raised in the Petition. Both the sides shall also not pre-judge the decision on the Petition yet to take place after completion of due process of law. While considering a request of Injunction generally few principles are observed by the Courts i.e. the injury or complaint, if caused, during the pendency of the suit may cause an irreparable loss to the party seeking injunction, or there is strong apprehension of future mischief or nuisance which may damage the rights of the party etc. It is to be examined that the party seeking injunction should have a legal right of injunction as well as judicially entitled for the Interim Relief. Overall impact of these legal requirement is that the balance of convenience should be favorable to the injunction seeker.
- 4.1 In this case, interalia considering the factual and legal aspects, prima facie it appears that, the Petitioner deserves a temporary protection against any prejudicial action by the defendants/respondents, which may hamper/ impede his rights during the pendency of the Petition. The impugned meeting of the Shareholders allegedly held on 28.10.2016 is subject to severe controversy. It was resolved as under :-

" As per the notice dt. 8.10.2016 meeting called by the Shareholders of India Farmers Pvt. Ltd. At Majithia Farms,

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*Madh Marve Road, Aksa Village, Malad (W), Mumbai-400 095
on 28.10.2016 at 11.00 a.m.*

- 1. Resolved that Mr. Manish Navinchandra Majithia is to be and hereby removed as a Director of the Company forthwith.*
- 2. Resolved that Mrs. Amrita Manish Majithia is to be and hereby removed as a director of the Company forthwith.*
- 3. Resolved that the registered office of the Company be shifted from 605, 6th Floor, Crescent Royale, Off. Andheri Link Road, Behind Hyundai Show Room, Andheri (W), Mumbai – 400 053 to Majithia Farm, Madh Marve Road, Aksa Village, Malad (W), Mumbai – 400 095.*
- 4. Resolved that all banking accounts of the Company viz. with Union Bank of India, S.V. Road, Malad (W), Mumbai – 400 064 or any other future accounts is liable to be operated by signatures of two of the directors of the Company which one of the signatory should be Mr. Navinchandra N. Majithia.*
- 5. Resolved that Mr. Jayesh Navinchandra Majithia is to be and hereby appointed as a Director of the Company forthwith.*
- 6. Resolved that Mrs. Prabhavati N. Sheth is to be and hereby appointed as the director of the Company forthwith.*

Dated this day of October, 2016.

India Farmers Pvt. Ltd.

Sd/-

*Navinchandra N. Majithia,
Chairman/Managing Director "*

- 4.2 I have carefully considered in totality the factual matrix and circumstances as prima facie narrated in brief and thereafter on due application of the connected Law hereby hold that a temporary ad-interim injunction is judicially required in this case. I therefore direct as under :-

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- (a) That till the question of removal of the Petitioner from the Directorship is finally decided, the Respondent-Company shall not convene or hold any Meeting without proper service of Notice to the Petitioners as prescribed under the provisions of the Companies Act, 2013.
- (b) That the Petitioners shall attend and co-operate with the Respondents in conducting the day to day business affairs of the Company in most peaceful and amicable manner. Both the sides shall also maintain mutual harmony in conducting the business activity of the R-1 Company.
- (c) That the Petitioners are hereby temporarily reinstated as Directors, however, restrained not to correspond on behalf of the Company or on behalf of the Respondents unilaterally without due information and written approval of rest of the Directors. Rather it is advised to all the Directors that no correspondence henceforth shall be made under one signature but to be signed by more than one Director of either side.
- (d) That in respect of Resolution No. 4 it is affirmed to the extent that in banking transaction one of the signatory should be Mr. Navinchandra Majithia (R-2/father), side by side it is also directed that banking transaction necessary and essential to run the business shall only be made, that too, with the consent of the Petitioner(s). No huge withdrawals are permitted unless and until approval is taken by this NCLT Bench.
- (e) That at present no interference is legally required in Resolution Nos. 5 and 6 as long as not hampering the rights or causing permanent loss to the Petitioners.
- (f) That a status quo shall be maintained in respect of the Shareholding of the Petitioners and the Respondents respectively.

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Both the parties shall act diligently in the best interest for the welfare of the Company.

(g) That this restrained Order shall remain in force till 30th August 2017 or disposal of the Petition if decided earlier. This Interim Order shall be reviewed after the expiry of the afore said period.

5. That the Petition is "Admitted". That the parties are directed to finalize the pleadings without uncalled for delay. A schedule is hereby given as consented by both the sides. That a Reply shall be filed by the Respondents on or before 20th May, 2017. A Rejoinder, if any, to be filed on or before 7th June, 2017. Thereafter, the Matter is now listed for hearing on 14th June, 2017.

Dated: 02nd May, 2017

Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)

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