

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**Appeal No.50/241-242/PB/2018**

**IN THE MATTER OF:**

Sh. Anshuman Rai & Ors.

.... Applicant/petitioners

Vs.

M/s. Heritage Hospitals Ltd. & Ors.

.... Respondents

**Order under Section 241-242 of the Companies Act**

**Order delivered on 13.02.2018**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M.KUMAR**

**Hon'ble President**

**Sh. S.K. Mohapatra,**

**Hon'ble Member (T)**

For the Petitioner/Applicant : Mr. Nidesh Gupta, Sr. Adv.  
Mr. Arun Kathpalia, Sr. Adv.  
Mr. Rajnish Singh, Mr. Nikhil Jain,  
Mr. Sumit Malhotra, Mr. Yogendar,  
Ms. Vriti Gujral, Advocates

For the Respondent : Mr. Jayant Mehta, Ms. Manisha Chaudhary,  
Mr. Mansumyer Singh, Ms. Samridhi Gogia,  
Advocates for R-2

**ORDER**

Petition mentioned.

Learned counsel for the petitioner has pressed for interim order of stay to restrain the Respondents from holding the illegally convened Extra Ordinary General Meeting of Respondent No. 1 Company which is scheduled to be held on 15<sup>th</sup> February 2018 at Varanasi. The other prayer pressed for interim relief is to restrain the Respondents from selling, encumbering, transferring or mortgaging the assets of the Respondent No. 1 Company, land and other assets of the Respondent No. 1 Company including advance given against the properties or creating any third party rights. It has also been submitted that status quo with regard to shareholding and the directorship of the Respondent No. 1 Company be maintained and inspection be provided by directing Respondent No. 2. The statutory records including



books of accounts and minutes of the Board of Directors meeting be permitted to be inspected by Petitioner No. 1 in its capacity as a Director and shareholder of Respondent No. 1 Company.

Mr. Nidhesh Gupta, learned Senior counsel for the petitioner has vehemently argued that a subsidiary of the company has been incorporated by fabricating documents without any notice to the petitioner and by fabricating Board Resolution dated 23.01.2017. A perusal of minutes of those meeting shows that the resolution for authorization was passed in favour of Mr. Priyanka Rai W/o Mr. Siddharth Rai-respondent No. 2 as authorized representative of the company to apply to various authorities and she was also authorized to subscribe to 99990 shares of Rs. 10/- each in the paid up share capital of the proposed subsidiary for and on behalf of Respondent No. 1 company and to sign the Memorandum and Articles of Association of the proposed subsidiary and also all papers, forms and documents. According to learned counsel this is wholesome fabrication and these acts have been done at the back of the petitioner.

It has further been argued that on 04.04.2017 a letter was addressed by the petitioner to one Mr. Vimlesh Shrivastava and Ms. Anupriya Sharma with the request to furnish various information and the schedule of required information was attached. The reply to the letter was given stating that all information required by the petitioner was to be provided after discussing with Respondent No. 2-Mr. Siddharth Rai, the Director. Thereafter the petitioner sent an email to Respondent No. 2 and raised serious objections with regard to the affairs of the respondent No. 1 Company. The same was replied by the Respondent No. 2 in a cryptic manner as is evident by reading the reply as at Annexure P/17. Again, a reminder was sent on 24.07.2017 by the petitioner No. 1 but with no avail. Our attention has also been drawn to the affidavit dated 11.02.2018 of the father of the petitioner No. 1 and Respondent No. 2, wherein Mr. Lal Ji Rai who is the Director in the Respondent No. 1 company, has in categorical terms affirmed that for the last eighteen months he did not receive notice of any meeting of the Board of Directors or shareholders. It has also been highlighted that how Mr. Vimlesh Shrivastava has been illegally inducted as Director to represent two





shareholder companies of Respondent No. 1 namely Heritage Hospital Management Services Private Limited and Progressive Udyog Limited. Both the aforesaid two companies represent total of about 10% shareholding in the Respondent No. 1 Company. He was inducted as a Director on 30.12.2017 and the meeting for inducting him as Director was held at two different places in Kolkata at the same time on the same day which is not practically feasible.

It is in the aforesaid facts and circumstances the convening of EOGM slatted for 15.02.2018 needs to be examined. It is not clear to us whether the Board of Directors passed a resolution for convening the EOGM particularly in the light of the affidavit filed by Mr. Lalji Rai who has stated that for last eighteen months he has not received any notice for holding of meeting of the Board of Directors. Neither notice nor who have attended the said Board of Directors meeting could be placed before us. In the absence of any valid resolution by the Board of Directors to convene an EOGM it is doubtful whether any EOGM could be convened. Likewise, the petitioner has also reiterated that no notice of any such meeting has been given to him.

A document has been shown to us by the learned counsel for the respondent which is a certified copy of the minutes of meeting dated 18.01.2018 which according to learned counsel is a resolution for calling extraordinary general meeting. However, a perusal of the aforesaid document shows that it is only certified copy signed by Respondent No. 2 and there are no details placed before us showing that petitioners were issued notice and who were the Directors who attended the meeting. It is also not clear that at whose instance requisition was sent for convening the EOGM.

Learned counsel for the respondent has also argued that EOGM cannot be stopped and has placed reliance on a judgment of Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India v. Escorts Limited & Ors.***, AIR 1685 SC 1370 and has argued that ordinarily the proceedings before the EOGM could not be stayed. It is true that Hon'ble Supreme Court has taken the aforesaid view. However, it cannot be lost sight that the judgment of Hon'ble the Supreme Court has proceeded on the assumption that the Board of Directors have passed a valid resolution for



convening the EOGM after the requisition was sent to it. It was on account of the adamant attitude of the Board of Directors in the Life Insurance Corporation of India (supra) case that the requisition was ignored by the Board of Directors and no meeting of the EOGM was convened. There were no allegations of any fabrication of the minutes of the Board meeting or any such fact which are alleged in the present case.

Mr. Mehta has also argued that holding of EOGM will advance the interest of Respondent No. 1 Company and will not cause any prejudice. The deferring of EOGM may result in cancellation of sanction of loan. In that regard we must clarify that in cases where allegations of fabrication with regard to floating of the subsidiary are prima facie apparent and the petitioner has also alleged that they are being kept out of the affairs of the Respondent No. 1 Company despite being 20% shareholder then the question of prejudice has to be considered in a different light. Petitioner No. 1 has categorically stated that his father as per the affidavit has not attended nor signed the minutes of meeting held on 23.01.2017 which have been shown as signed by him. Thus, prima facie fabrication of document, as claimed by petitioners, cannot be ignored.

Keeping in view the aforesaid brought factual backgrounds we are of the view that interim prayer made by the petitioners deserves to be granted and we direct as under:-

- (a) The meeting of the EOGM shall be deferred till the next date of hearing.
- (b) The respondents are restrained from selling, encumbering, transferring or mortgaging the land and other assets of the Respondent No. 1 Company.
- (c) It is further directed that status quo with regard to shareholding and Directorship of Respondent No. 1 company shall be maintained.

Reply by respondents be filed within two weeks with a copy in advance to the other side.

Rejoinder, if any be filed within ten days thereafter with a copy in advance to the other side.



Liberty granted to the learned counsel for the petitioner to change page No. 48 as there are some typographical errors/omissions.

List for further consideration on 16.03.2018.

Sdl -

**(M.M.KUMAR)  
PRESIDENT**

Sdl -

**(S.K. MOHAPATRA)  
MEMBER(TECHNICAL)**

13.02.2018  
Vineet