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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD

CP No.19/241/HDB/2016

Date of order: 28.11.2016.

Between:

1. Mr. Thota Gurunath Reddy,
Plot No. 1292, Road No.65,
Jubilee Hills,
Hyderabad-500034,
Telangana
2. Mr. Thota Raghunath Reddy,
Plot No.811, Road No.41,
Jubilee Hills,
Shaikpet, Hyderabad-500033,
Telangana.
3. Paradigm Corporation Pvt. Ltd
Plot No. 1292, Road No.65,
Jubilee Hills,
Hyderabad-500034,
Telangana

...Petitioners

And

1. Continental Hospitals Private Limited
Plot No.3, Road No.2,
IT & Financial District,
Gachibowli, Hyderabad-500035,
Telangana



2. Gleneagles Development Pte. Limited
111, Somerset Road,
#15-01, Triple One,
Somerset, Singapore-238164
3. Mr. Low Soon Teck
245, Balestier Road, #18-03,
Singapore-456005 SG
4. Mr. Tan See Leng
16, Siglap Plain,
Singapore-456005 SG
5. Mr. Ramesh Krishnan
N-1, EVR Nagar,
Near Anna Nagar,
Peelamedu, Coimbatore-641004,
Tamilnadu
6. Mr. Omkar Deepak Joshi
8, Alexandra View, #29-07,
Singapore-158747 SG
7. Mr. Lim Suet Wun,
11, JalanChengam,
Singapore-2057 SG

... Respondents

Counsel for the Petitioner :

Shri R. Raghunandan Rao
along with Sh. P.Vikram

Counsel for Respondent No.1 :

Shri Ashwani Reddy



Counsel for the Respondent No. 2:

Shri Dammalapati Srinivas

Sh. Vivek Reddy

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

ORDER

(As per Rajeswara Rao Vittanala, Member(J)

1. The present Company petition has been filed by Mr. Thota Gurunath Reddy and 2 others Under Sections 241 to 244 & 337 to 341 and other applicable provisions of the of the Companies Act, 2013
2. The brief facts leading to the filing of present petition, as set out in petition, are as follows:
 - i) The Continental Hospitals Private Limited (XIN U85110TG2007PTC052283) (which is referred to as Company hereinafter) was initially incorporated under the provisions of the Companies Act, 1956 on 16.01.2007 in the name and style of 'Continental Hospital Limited' and subsequently converted into Private Limited on 21.07.15, having its Registered office at Plot No.13, Road No. 2, IT & Financial District, Gachibowli, Hyderabad, Telangana State.



- ii) The first petitioner is a shareholder and, one of the Core Promoters by holding 39.28% of total paid up Capital of the Company. The Second petitioner is a Director, also a shareholder by holding 3 equity shares and he is also one of the Core promoters of the Company. The third petitioner (Paradigm Corpn. Pvt. Ltd is also a share holder holding 8.60% of the Capital. And altogether, the petitioners stated to hold 47.88% of total paid up capital.
- iii) It is alleged that the respondents are indulging in several acts of mismanagement of affairs of Company in which they are doing like diversion of funds: manipulation of billing, adopting strategies that would result into losses to the company and thus pressuring the petitioners to sell their shares : infusing additional capital into the company so as to dilute their share holding etc.
- iv) They are creating artificial funding crisis for the Company; manipulated the minutes of Board meeting dated 25.10.2016 showing approval of Rights issue and forcing them to purchase those shares while violating terms and Conditions of Shareholders Agreement dated 18th February, 2015. On being unable to face and, to control various acts of mismanagement of the Company, on the part of majority share holding respondents, they have filed the present petition seeking intervention of this Tribunal so as to set the



affairs of the Company being run on sound and equitable manner.

3. Heard Shri R. Raghunandan Rao, Learned Senior Counsel for the Petitioners, Shri Ashwani Reddy, Learned Counsel for the Respondent No.1 and Shri Dammalapati Srinivas, Learned Advocate General for the State of AP and Senior Advocate, for Respondent No.2.
4. Shri R.Raghunandan Rao, has submitted that the Respondent No.2, after acquisition of 51% of share holding and appointing majority of their Directors for the company, have started acting against the interest of the company using it as Vehicle to enrich their Associate Companies, namely, Parkway Health Care India Private Limited and Parkway Holdings Limited. They were being made mere spectators to the mismanagement of company by the Respondents.

He has further submitted that there is Shareholders Agreement dated 18th February, 2015 among the parties and, the respondents have violated several of its clauses. They have created artificial/inflated losses to the company, so that even they want to use escrow amount set aside for expansion of hospital facilities contrary to agreement. They have failed to take any steps to release personal guarantees of the petitioners. He further submits that the respondents are bent upon to dilute the shareholding of petitioners by issue of rights issue even though the petitioners are strongly opposing such efforts of the respondents.



However, they have persisted their efforts and, thus called for a meeting of Board of Directors on 7.10.2016 and, it was postponed to 25.10.2016 as the petitioners were not available. So the issue was again put in the meeting held on 25.10.16 and, the proposal of issue of shares was opposed by the petitioners and other nominee directors. Only one nominee of second respondent was present physically and voted for the resolution. However, contrary to rule 3 of Companies (Meetings of Board and its Power) Rules, 2014, and contrary to agreements between the parties, the resolution was deemed to have passed and, offered those shares to the petitioners with an intention to grab those by themselves and for that purpose , they are proposing to hold Board meeting on 29.11.2016 in order to legalise their illegal acts. The Learned Counsel has pointed several lacunas in the meetings conducted by referring various rules and law.

He has also filed CA No. 49 of 2016 in the present CP by seeking several interim reliefs as mentioned in the pending Company petition , so as to protect the interest of petitioners. He therefore, urged the Tribunal to pass appropriate interim orders to protect the interest of petitioners. He has also filed a memo dated 28.11.16 along with emails by pointing out that the respondents have approached the Banks of petitioners and insisted the Banks to issue letters regarding petitioners debts to mislead the Board of Directors.



5. Shri Ashwani Reddy, the learned counsel for the respondent No. 1 , while accepting notice on behalf of respondent No. 1, has questioned the very maintainability of petition itself on various grounds especially on the main ground that there is an enforceable Shareholders Agreement dated 18th February, 2015 executed among the parties, in which there is a specific Article XIX under the heading Dispute Resolution and the parties shall attempt to first resolve any dispute or claim of whatsoever nature arising out of this agreement through good faith negotiation and arbitration. Since the issues in question arise out of the said agreement, the first petitioner issued a notice dated 11th November, 2016 under section 19.1 of the said agreement to the respondents. And without exhausting that remedy, the petitioners have filed the present petition. The Rights issue in question was properly undertaken and, there was no deviation whatsoever as alleged by the petitioners.

He has also filed an affidavit dated 27th November, 2016 on behalf of Respondent No.1, on the current financial status of Respondent No. 1 and tried to justify the Rights issue in question by stating that the company intends to raise a sum of Rs. 15 crores in order to meet immediate financial needs/shortfall of the company as mentioned below:



Intended use of funds received pursuant to the Rights issue	Amount (Rs in Crs)	Funds available with the company as on November 30, 2016	Amount (Rs. In Crs)
Payment to be made to banks, including interest outstanding till 31 October 2016 (excluding penal charges claimed by the banks of Rs.1.08 Cr)	8.88	Bank balance as on 26.11.2016	2.10
Interest on borrowings from banks for the month of November 2016	2.18	3 days expected collection (November 28, 2016 to November 30, 2016 @ Rs.35 Lakhs per day)	1.05
Vendors to whom payment has been pending for more than 90 days as of 31 October 2016	5.19		
Salary payable on 01 st December 2016	2.00		
Total Outstanding (A)	18.25	Projected cash flow available as on November 30, 2016 (B)	3.15



6. Shri Dammalapti Srinivas, the learned Advocate General, also opposed the maintainability of the petition and, disputed various contentions of the petitioners. He has also filed CA No. 51 of 2016 on behalf of the respondent, under section 45 of Arbitration and Conciliation Act, 1996, by seeking to refer the issue to arbitration as per the clause cited supra in terms of Share Holders Agreement. He has also justified that the Board meeting in question was conducted in accordance with law and denied all the allegations of the petitioners in that context. He also urged the Tribunal that the Company may be permitted to conduct Board meeting scheduled to be held on 29.11.16 and transact its normal business. He has also relied upon the decision of Apex court in VS Krishnan and others Vs Westfort Hi-Tech Hospital Ltd and others (2008)3 Supreme Court Cases, 363) , wherein , it is held there cannot be any prejudice, when the petitioners were given the right to subscribe to the rights issue along with all others in the same proportion. So, he contended that in the present case too, the petitioners were offered rights issue in proportion to their shareholding in the company and there is nothing illegal in the issue in question.

Both the learned counsels for the respondents urged the Tribunal that there is severe financial crisis in running the Company and thus they want to permit them to utilise the proceeds of Rights Issue for the Company pending the Company petition.



7. The Learned Senior counsel for the petitioner submits that he has served notices to all the respondents before filing the present petition. However, only the counsels on behalf of respondent No. 1 & 2 as stated above are present.
8. As stated supra, the main issues to be considered in the main petition are; whether the respondents have conducted the Board meetings in question in accordance with law or not ; And whether circumstances justify the rights issue in question. However, these issues cannot be adjudicated at the admission stage. In these circumstances, the Tribunal has to consider the paramount interest of the Company to run its normal business. As stated supra, the company is stated to be in financial distress to meet its essential business operations. However, at the same time, it is the grievance of the petitioners that they are being put to several disadvantages by the actions of respondents, ie to say latest is conducting Board meetings contrary to rules and proceeding ahead with rights issue.
9. It is not in dispute that the ensued Board meeting scheduled to be held on 29.11.16 is not a sudden decision of the company and, the parties are also aware of it in advance. Hence, Tribunal cannot stay the proposed Board Meeting but the proceedings of Board meeting should be kept pending till the next date of hearing. And it is also just and proper to



permit the respondents to make available funds to the Company so as to meet the needs of statutory/contractual obligations of the Company.

10. So, after considering the entire issue and, in order to protect the interests of both the parties and the Company, we deem it just and proper to the pass the following interim directions, without prejudice to the rights of parties raised in the Company petition, which will be adjudicated later;

- I. We permit the Board Meeting of the Company to be held as scheduled on 29.11.2016 with a condition that the decisions of Board should not be implemented till the next date of hearing.
- II. We permit the Company to utilise the proceeds of the rights issue for meeting the liabilities as stated in the affidavit as under:-

Intended use of funds received pursuant to the Rights issue	Amount (Rs in Crs)	Funds available with the company as on November 30, 2016	Amount (Rs. In Crs)
Payment to be made to banks, including interest outstanding till 31 October 2016 (excluding penal charges claimed by the banks of Rs.1.08 Cr)	8.88	Bank balance as on 26.11.2016	2.10



Interest on borrowings from banks for the month of November 2016	2.18	3 days expected collection (November 28, 2016 to November 30, 2016 @ Rs.35 Lakhs per day)	1.05
Vendors to whom payment has been pending for more than 90 days as of 31 October 2016	5.19		
Salary payable on 01 st December 2016	2.00		
Total Outstanding (A)	18.25	Projected cash flow available as on November 30 2016 (B)	3.15



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- III. Issue notices to all the respondents and, the petitioners are also directed to serve notices to them and submit proof of service in Registry immediately.
- IV. We make it clear that all the actions taken by the parties from today, would be subject to further orders to be passed in the case by the Tribunal.
- V. List the CA No. 51 of 2016 for admission on 9.12.16 along with CP for further orders

Sd/-

RAVIKUMAR DURAISAMY
Member (T)

Sd/-

RAJESWARA RAO VITTANALA
Member (J)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68