

225

BEFORE THE  
NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, KOLKATA

CP No. 284/2013  
CA NO. 319/2014

Ms. Manorama Kumari  
Hon'ble Member (J)

*In the matter of the Companies Act, 1956 Section 111, 235, 237, 397, 398, 399, 402, 403, 406 and 407*

*And*

*In the matter of Alok Agarwal & Ors*

*And*

*In the matter of*

*M/s. Earthic Consultancy Pvt. Ltd & Ors.*

Parties on Record :

Mr. Kuldip Mallik, Advocate		Petitioners
Mr. Patita Paban Bishwal, Advocate		

Mr. Akhilesh Kumar Shrivastava, Advocate		Respondents 1 to 4
Ms. Pujashree Dacholia, Advocate		
Mr. Aditya Kumnar Mukherjee, Advocate		

Dates of Hearing : 19<sup>th</sup> December, 2016

Date of Order : 3<sup>rd</sup> Feb. 2017

## ORDER

The CA No. 319/2014 is arising out of Company Petition No. 284 of 2013 moved on 21<sup>st</sup> November, 2013 under Section 111, 235, 237, 397, 398, 399, 402, 403, 406 and 407 of the Companies Act, 1956 inter alia praying for various interim reliefs against the respondents in respect of the affairs of the respondent No.1 company for various acts of oppression and mismanagement of the affairs of the company by the respondents and especially by the respondent No.2, which is pending for adjudication.

On hearing the main Company petition bearing No. 284/2013, , then CLB passed an ex parte ad interim order directing maintenance of status quo as regards the paid up share capital of the Company and also, the Respondent Nos. 3 and 4 were restrained from exercising any voting right in the Board meeting or deriving any benefit by virtue of holding the position as Directors of the company.

Subsequently, the Respondents/Applicants filed one Company Application being CA No. 765/2013 and the then CLB, in addition to the interim order dated 21-11-2013, passed order dated 19-12-2013 directing as follows :

" Both the parties shall not make any personal withdrawals out of the accounts of respondent No.1, Company, until next date of hearing".

Thereafter, another Company Application bearing No. 767/2014 was filed by the respondents seeking direction for calling and convening a Board meeting of the Respondent No.1, Company at shorter notice to all the Directors and to place in the said Board meeting all the books of accounts including receipts, payments, expenses and incomes, contracts etc. related to the Respondent No.1, company and also, all the books of accounts and other financial documents be directed to be handed over to the statutory auditor of the Company to audit the same.



Having considered the Company Application and the arguments/submissions (oral and written) and the citations made by both the side, the then CLB made the following observations while disposing of the CA No. 767/2014 :

" the statutory audit of the books of accounts of the Company is pending due to non-furnishing of the documents by the petitioners and the respondents. However, for the statutory compliances, it is highly essential that the process of audit be expedited. Therefore, in the interest of justice and for smooth functioning of the Respondent No.1, Company, I hereby direct the Respondent No.1, Company to get the accounts audited at the earliest and for this purpose, the petitioners as well as the Respondents are directed to co-operative with the statutory auditor and to provide to him the requisite records/papers for immediate completion of pending statutory audit," with this observation, the Company Application No. 767/2014 has been disposed of.

Then the petitioner came with Company Application No. 319/2014 with prayers for necessary interim injunction order restraining the respondents/non-applicants from acting upon or taking any steps pursuant to the purported notices dated 4<sup>th</sup> April, 2014 and 29<sup>th</sup> April, 2014 and also restraining the respondents from holding, convening or conducting the Board meeting of the company on 11<sup>th</sup> April, 2014 or on 30<sup>th</sup> April, 2014 ; in the event of the Board meeting being held on 11<sup>th</sup> April, 2014 and on 30<sup>th</sup> April, 2014, no effect be given to the resolutions, if any passed thereat till adjudication of the Company Petition No.284 of 2013.

The petitioner also prayed for an order of injunction restraining the respondent No. 2,3 and 4 from representing the respondent No.1, Company in any manner in this proceedings and filing any affidavit on behalf of the respondent No.1, Company or from making any application on behalf of the respondent No.1 in this proceedings.





The said petition was filed in 2014 and since then the petitioner has made no endeavour to dispose of the application. In the said Application No. CA 319/2014, the petitioner/applicant has challenged the meeting dated 11-04-2014 and/or the meeting dated 30-04-2014 and the resolutions passed therein.

Further, on perusal of the record, it is found that the injunction granted on 21-11-2013 and additional interim order passed on 19-12-2013 were never made absolute and had not been extended after 16<sup>th</sup> July, 2015. At present, there is no order of injunction nor the petitioner(s) have made any effort to get it continued and since 16<sup>th</sup> July, 2015 they are sleeping over their right and made no endeavour to bring on record with regard to the violation of any order by the Respondents save and except the instant application praying for injunction, over and above the interim injunction order passed on 21-11-2013 and on 19-12-2013.

The settled principle of law is that when a person seeks equity, he must come with clean hand, even assuming that the allegation of the petitioner, if proved, do make out any case for setting right the act of the Company, which has already been more than 2-1/2 years ago by dint of the meeting and resolution therein, as alleged by the petitioner.

The respondent(s) also relied on the case law 2011/ 8 SSC 249 – Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors, referring paragraph 40,41,43, 45, 46, 47 and 48 wherein it is observed that " It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of the ex parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioners after obtaining ex parte injunction orders or stay orders may not find encouragement....."

*Altan*

In the instant case, the ex parte order of injunction is passed on 21-11-2013 and the said order was neither made absolute nor was it extended after 16<sup>th</sup> July, 2015.

Now, after more than 2-1/2 years, the petitioner/applicant is pressing the said Application and wanted to have the restrained order against the respondent(s)/non-applicants upon holding of meeting dated 11-04-2014 and 30-04-2014 and resolution taken thereof, when the Company/Respondents had already acted upon, on the dint of said meeting as well as by dint of resolution taken in the said meetings. As such, due to afflux of time, it becomes infructuous.

Hence, in view of the above, the Company Application CA No. 319/2014 is dismissed without any cost.



MANORAMA KUMARI  
MEMBER(J)