

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH : AT HYDERABAD**

**CA No.1 of 2014, in CP No.84/2013.**

Date of Order:01.09.2016

Between:

Sri M. Venkat Rao  
S/o Mr. Janardhan Rao,  
R/o 10-2-4, East Marredpally,  
Secunderabad – 500026.  
Telangana.

Applicant/Petitioner

Vs

M/s Emjay Industries Private Limited  
2<sup>nd</sup> Floor, Unit No.210, Amrutha Villa,  
Raj Bhavan Road, Somajiguda,  
Hyderabad – 500026., and (5) others.

Respondents

Counsel for the Applicants/Petitioner

: Sri S. Chidambaram.

Counsel for Respondent 2 & 3

: Sri Sh. Virender Ganda, Sr. Counsel  
along with Sri MVJK Kumar and  
Sri Tarun Mehta, Advocates.

**CORAM:**

**Hon'ble Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)**  
**Hon'ble Mr. RAVIKUMAR DURAISAMY, MEMBER (TECH)**

**ORDER**

**(As per Rajeswara Rao Vittanala, Member (J))**

1. The CP was initially filed before Company Law Board, Chennai Bench, Chennai. Upon the constitution of NCLT Bench at Hyderabad for the States of Andhra Pradesh and Telangana, the main case along pending CA case is transferred to Hyderabad Bench. Hence, we are deciding the case.
2. The Applicant/Petitioner has filed the present CA No.1/2014 in CP No.84/2013 by inter alia seeking a direction for collection of cheque, restrain the parties from sales/transfer/alienation of the assets of the company, allow the petitioner to access to the office of the respondent No.1 company and to furnish monthly statement of revenue and expenditure of the respondent No.1 company and other appropriate orders etc.

Lw



3. The Applicant/Petitioner submitted that the company petition No.84 of 2013 was filed under sections 397, 398 r/w section 402 and 403 of the Companies Act 1956 by seeking several reliefs for the offences committed by the respondents. The CLB has passed an interim order on 21.11.2013 by permitting the applicant herein to take appropriate action in revalidating the pay orders in question and they should be deposited with Bank account of the first respondent company by restraining the parties from utilizing those funds without leave of the Bench.
4. The applicant further submitted that he had approached the purchaser of the property i.e., Mahavir Auto Diagnostics Private Limited with a request to revalidate the pay order and the cheques given by him. However, he undertakes to comply the above request provided, the company pays the pending statutory dues on the properties sold.

He further submits that the respondent No.1 company has received a demand notice dated 15.10.2013 from APIIC Ltd., seeking for payment of property tax of more than Rs.22 lacs with a warning that failure to pay the amount would result in distraining the property of the company under Rule 30 of schedule of the AP Municipalities Act 1965 with penalty. The company also required to pay sub division fee for sub division of non residential area for a total fee of more than Rupees 10 lacs to GHMC. The applicant /petitioner also stated that there are certain pressing creditors of the company. The Mahavir Auto Diagnostics Pvt Ltd., also agreed to revalidate /reissue the cheque for an amount of Rs.58,43,500/- which can be used by the company to clear statutory dues. It is also stated that the company is transacting its property illegally with respondent No.6.

5. It is further stated that the petitioner/applicant also alleged that the staff of the company are not responding to, and he was denied access to various records, registers and documents of the company. The respondent No.2 and 3 are misusing their position, and are running company to the exclusion of the applicant/petitioner. So, he requested the CLB to direct the respondent No.1 Company to access to the office as well as the records and documents of the company since he is still a Director of the company.
6. The Respondent No. 2 & 3 of the present company application has opposed the application on various grounds including the maintainability of the main company petition. They have also filed a detailed counter statement dated 25<sup>th</sup> February, 2014 by denying each and every averment /allegation made by the applicant/petitioner.

Kirw



The sum and substance of the contentions made by the respondents are that the reliefs sought in the present application are more or less same as sought under para No.9 in the CP. No.84/2013. They have already filed a detailed reply controverting each and every averment made in the company petition and thus contended that the main petition itself was not maintainable at all. The Hon'ble CLB has already considered the interim relief as sought for in the main petition at the time of admission of the case and passed interim order dated 21.11.2013. In fact, the applicant did not comply with this interim orders. So, it is contended that the applicant/petitioner can not file again an application like the present one by seeking similar interim reliefs which was already part of main petition and the Hon'ble Board has already considered and passed the said interim order.

7. They further stated that the contentions regarding revalidating the pay orders/cheque are baseless and untenable. The allegations regarding pending statutory dues on the company are also denied having no basis at all. In fact, they stated that the company has approximately lost Rs.34.5 lacs as interest @ 9% per annum on the amount of Rs.6.5 crore because of the action of the applicant/petitioner. The contentions /allegations made by the applicant/petitioner regarding APIIC with reference to the payment of property tax are not tenable and denied the same.
8. They further stated that the apprehension of the Applicant/Petitioner that 2<sup>nd</sup> and 3<sup>rd</sup> respondent are in collusion with the 6<sup>th</sup> Respondent to alienate the assets of the respondent No.1 Company are completely baseless and misplaced. The allegation of the Applicant/Petitioner with regard to the denial of access to records, registers and documents of the company is completely baseless and unfounded. Ultimately they submitted the allegations /contentions made in the present application cannot be looked into in the present miscellaneous application and they can be looked into in the main company petition. Hence, they sought the dismissal of the CA 1 of 2014.
9. Heard Sri S. Chidambaram, the learned Practicing Company Secretary (PCS) for the Applicant for the Applicant and Sri Sh Virender Ganda, the learned senior counsel for the respondent No. 2 & 3. We have also perused the entire case record including the main petition and reply and rejoinder filed by the parties.
10. The learned counsel for both the parties, while reiterating the various averments/allegations made in their pleadings, have further pointed out the relevant documents filed along with the pleadings. The learned senior counsel for the respondents has seriously opposed the maintainability of the present application and in fact, the main company petition itself is frivolous and not maintainable and the same is liable to be dismissed in limine with costs. The learned PCS also pointed out vehemently the oppressive and mismanagement of the company by pointing out several documents filed along with his application.

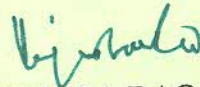


11. During the course of arguments, the learned senior counsel for the respondent agrees to make available the relevant records, which are available with the company, at the time of hearing of the main company petition, for perusal of the Bench. For which, the learned PCS also agreed for the same by not pressing the other reliefs as sought in the CA No.1 of 2014.

In view of the above facts and circumstances of the case and in the interest of justice, CA No.1/2014 is disposed of with a direction to the respondent No.1 to 3 to make available the relevant records of the case which are available with the respondent No.1 company, for perusal of the Bench, at the time of hearing of the Company Petition No.84 of 2013. No order to costs.



**RAVIKUMAR DURAISAMY**  
**MEMBER (TECH)**



**RAJESWARA RAO VITTANALA**  
**MEMBER (JUDL)**