

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

CP No. 03 of 2015

(TP/72/HDB/2016)

Date of Order: 02.11.2016

In the matter of:

1. Mr. R. Neelakanteswara Rao
S/o Subbarayudu
#1-4-7-5A, Kamakoti Nagar
Vidhyadharpuram
Vijayawada – 520012
2. Ms. R. Saroja Rani
D/o Subba Rao
1-4-7-5A, Kamakoti Nagar
Vidhyadharpuram
Vijayawada – 520012
3. Mr. Maddi Mallikarjuna Rao
S/o Chandra Mohan Rao
#7-2-12, Parasuramaiah Street
Kothapet, Vijayawada – 520012
4. Ms. K. Alekhya
D/o K.L. Chnadra Sekhar
Hindh Street, Gandhi Nagar
Vijayawada – 520003
5. Ms. M.V. Sujatha
D/o K. Subba Rao
House No. 1-3/24-23/24
Maddilavari Street
Vidhyadharpuram
Vijayawada- 520012

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6. Mr. Akula Krishna Chandra Sekhar
S/o A. Prabhakar Rao
Flat No. 102, Sai Hema Towers
Papa Raju Street, S.N. Puram
Vijayawada – 520011

7. Ms. Akula Padmaja
D/o M. Suryanarayana Murthy
Flat No. 201, Pavan Residency
Mamtha Hostel Road
Khammam – 507002

8. Mr. A. Vijayaraghavalu
S/o A. Prabhakara Rao
H. No. 402, Tahar Ville Lane
Yousufguda Check Post
Hyderabad – 500045

9. Mr. Bevera Venkata Chinna
S/o B. Nageswara Rao
House No. 1-8-522/1
Chikkadpally, Hyderabad – 500020

10. Ms. Bevera Manjula Ratnam
D/o P. Prabhakara Rao
House No. 1-8-522/1
Chikkadpally, Hyderabad – 500020

11. Ms. Chella Jaya Sudha
D/o D. Satyanarayana
H.No. 31-21, Venkateswara Metta
Allipuram
Visakhapatnam

..... Petitioners

AND



1. Essar Water Proofing Chemicals Private Limited
#312, 3rd Floor, Raghava Ratna Towers,
Chirag Ali Lane, Abids
Hyderabad – 500001

2. Mr. Sunil Rajmani Pathak
20, Milind Nagar, Tiwari Compound
Jogeswari – Vikhroli Link Road
Powai
Mumbai – 400072

3. Mr. Pramod Kesheo Pathak
302 B, Matoshree Park
C/o Udayshree Society
Bhandup (E), Mumbai – 400042

.... Respondents

Counsel for the Petitioners:

Mr. S.P. Vijayaragavan,

Mr. Ramji,

Mr. G. Thanigaivel

Representative for the Respondents:

Mr. Pramod Pathak

Party in Person

CORAM:

HON'BLE Mr. RAVIKUMAR DURAISAMY, MEMBER (TECH)

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)

ORDER

(As per Ravikumar Duraisamy, Member (Tech))

1. The Company petition bearing No. 3 of 2015 was initially filed before the Hon'ble Company Law Board, Chennai Bench, Chennai. Upon the constitution of NCLT Bench at Hyderabad for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench of NCLT. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding it.
2. The present Company Petition has been filed by the Petitioners under Sections 397, 398, 402 – 406, 539, 614 of the Companies Act, 1956 by praying the Board to pass an Order against the 1st Respondent Company directing to nominate one of the Petitioners/ minority shareholders as a Director on its Board; to direct the 1st Respondent Company to account for the moneys withdrawn from Account No. 00000030759472911 held with the State Bank of India, Bhavanipuram Branch, on October 5, 2011 viz., Rs. 5,00,000 (Rupees Five Lakhs) and Rs. 6,00,000 (Rupees Six Lakhs) on June 2, 2012 and in default, punish every Officer of the Company along with an Order for deposit of said moneys back into the 1st Respondent Company account with an interest of 24% p.a. upto the actual date of payment; to direct the first Respondent Company to issue proper and sufficient Notice to the Petitioners whenever Meetings of any nature are convened pertaining to the affairs of the 1st Respondent Company and provide inspection of records; to restrain the 1st Respondent Company from converting unsecured loans to debentures without proper and sufficient notice to the



Petitioners/minority shareholders and following due process of law, etc.



3. The case was listed for hearing before the NCLT Hyderabad Bench (hereinafter referred as the Tribunal) on 27.07.2016, 16.08.2016, 02.09.2016, 05.09.2016, 28.09.2016 and finally on 19.10.2016. On 28.09.2016, after hearing the Learned Counsel for the Petitioners and the 3rd Respondent (Party in Person), this Tribunal interalia, directed the Petitioners to submit name(s) of person (s) whom they think would be best suited as a Director among them. The Respondents, interalia, were directed to submit the details about their individual qualification & experience, future plan/ path of 1st Respondent's activity, source(s) of raising funds, nature of loan, how much funds and mode of payment. This Tribunal also made it clear that the proposal submitted by both the parties is to be only in respect of the future course of action viable for a proper and fair functioning so as to avoid winding up of the 1st Respondent Company as neither of the party desires a winding up. Both the parties were directed to submit their proposal by 7th October, 2016.
4. The Petitioners submitted four proposals relating to Minority Member on Board, Registered Office of 1st Respondent Company, Increase in share capital and Appointment of a Chartered Accountant to enable filing Annual Returns, etc to this Tribunal on 7th October, 2016.
5. During the last date of hearing i.e. on 19.10.2016, the parties pressed on mainly the proposals related to Appointment of a Chartered Accountant and Increase in Share Capital. Accordingly,



we are considering the following two proposals of the parties.

a. Proposal of appointing a Chartered Accountant:

Both the parties could not suggest a common Chartered Accountant to audit the books of accounts and left to the Tribunal to appoint a Chartered Accountant. Accordingly, the Tribunal is appointing Mr. Madhusudhana Reddy, Partner of M.M.Reddy & Co., Chartered Accountants, having their office at G-8, Amrutha Ville, Opp. Yashoda Hospital, Rajbhavan Road, Somajiguda, Hyderabad – 500082 for auditing of the Books of accounts of the 1st Respondent Company as per the Companies Act, 1956/2013 for the Financial Years starting from 2010-11 to 2015-16. The Chartered Accountant is directed to submit his audit reports duly audited in respect of all the said financial years within 2 months from the date of receipt of copy of his appointment. Both the parties agreed to share the cost equally and as such The Tribunal fixes the Chartered Accountant fees as Rupees One Lakh along with actual expenses relating to travel/stay to be borne by both the parties equally.

b. Proposal to increase the Share Capital:

Sh. Pramod Pathak (Party in Person), 3rd Respondent cited insufficient funds for running the 1st Respondent Company and submitted to increase share capital of the 1st Respondent Company. The petitioners submitted that although they have no objection in the Respondents increasing share capital by

infusing fresh/new funds, they made following proposals and sought the Tribunal to pass suitable directions so that there is proper accounting of funds:

- i. The fresh/new funds may be directed to be raised through a separate escrow account.
- ii. The fresh/new funds infused will first be utilized for clearing all the statutory dues and compliances, defaults which exist as on date.
- iii. Unsecured loans should not be converted into debentures or equity shares
- iv. Assets of 1st Respondent Company should not be shown/given as collateral for any purpose till the new BOD is constituted and approved by all in a meeting of shareholders, after its reconstitution.

We have considered the proposals of the parties and grant permission to the Respondents to increase the share capital to meet the 1st Respondents statutory dues and other mandatory expenses relating to day to day functioning of the Company.

Post the Company Petition No. 03 of 2015 after the receipt of report of the Auditor.

Sd/-

RAVIKUMAR DURAISAMY

MEMBER (TECH)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (JUDL)

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V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT HYDERABAD