

C.A. No.1160/2015

Tirumala Infrabuild Pvt. Ltd. &amp; Ors.-vs-

IDIO Construction &amp; Industries Pvt. Ltd. &amp; Ors..

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**C.A. No. 1160/2015 in C.P.No. 145/2013**

**CORAM**

**Shri V. P. Singh  
Hon'ble Member (J)  
Shri S. Vijayaraghavan  
Hon'ble Member (T)**

In the matter of the Companies Act, 1956 : Section 397/398

In the matter of: Tirumala Infrabuild Pvt. Ltd. & Ors.  
Versus

..... Petitioners

M/s. IDIO Constructions & Industries (India) Ltd. & Ors. ... Respondents

Date of Concluding the Order : 16.09.2016

Date of Pronouncing the Order 6-10-2016

**Parties on Record :**

1. Mr. Rajee Vranjan Prasad, Advocate	] For Petitioners
2. Mr. Surendra Kumar, Advocate	
3. Mr. Nilanjana Chatterjee, Advocate	
4. Ms. Surabhi. Advocate	

1. Mr. Ratnanko Banerji, Sr. Advocate	] For Respondent nos.1,2 & 5
2. Mr. Kuldip Mullick, Advocate	
3. Ms. Urmila Chakraborty, Advocate	
4. Mr. Patita Paban Bishwal, Advocate	

**ORDER**

**Per Sri Vijai Pratap Singh, Member(J)**

This Company Application has been filed in C.P. no.145 of 2015 for treating this application as part of the Company Petition no.145 of 2013.

2. Brief facts of the case are that petitioner applicant wants to bring on record the consent letter in which the name and signature of the petitioner nos.13,14 and 15 were available/obtained at the time of presenting the Company Petition. Prior to this, a

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consent letter was filed along with the Company Petition no.145 of 2013 which did not contain the names and signature of petitioner nos.13,14 and 15. A consent letter containing the names and signatures of the petitioners alongwith the names of petitioner nos.10,18,28,29, 4 and 3 was supposed to be filed alongwith the Company Petition no.145 of 2013. The consent of the petitioners were obtained on two separate sets/sheets of papers. However, in one of the sets/sheets the signature of three petitioners namely – (1) Jawahar Prasad (P-13), (2) Sonapati Devi (P-14) and (3) Laxman Prasad (P-15) were not obtained though they had consented and signed on the another sheet of paper, but inadvertently due to clerical error the consent letter which did not contain the names of petitioner nos. 13,14 and 15 was filed in place of the letter/ sheet containing their signature. A copy of consent letter containing names of the petitioner nos. 13,14 and 15 have been enclosed as Annexure 'A-1' of the application.

2.1 The applicant /petitioner has contended that under Regulation 15 of the Company Law Board Regulations, 1991, the above clerical error/defect was to be pointed out by the then Company Law Board, but it was not pointed out and the petitioner could not get the chance to rectify the error. The petitioner nos. 13,14 and 15 had given their consent at the time of filing of the instant company petition. These petitioners, however, immediately sworn affidavit in support of the Company Petition. All these affidavits are part of pleadings in Company Petition no.520 of 2013. However, for the sake of convenience of the Court, copies of the affidavits enclosed by R-2 as well as the affidavits sworn by the petitioner nos. 13,14 and 15 have been annexed as Annexure-B to this Supplementary Affidavit. The applicant/petitioner has relied on the

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case law of Hon'ble Supreme Court AIR-2005 SC 83 J.P. Srivastava & Sons Pvt. Ltd. & Ors.-vs- M/s Gwalior Sugar Co. Ltd. & Ors., wherein the Hon'ble Supreme Court has held that :-


*"If the Court is satisfied that the petitioners represent a body of shareholders holding the requisite percentage, it can assume that the involvement of the company in litigation is not lightly done and it should pass orders to bring to end the matters complained of and not reject it on a technical requirement."*

2.2 The petitioner/applicant has claimed that he has filed this application under *bona fide* belief and that error which has occurred was not intentional but because of the facts and circumstances given in the application. On the above basis, applicant/petitioner has claimed that instant petition may be treated as part of the main Company Petition no.145 of 2013 and the same be considered at the time of hearing on the issue of authorization in terms of order dated 06.02.2015. The petitioners have annexed copies of certain documents alongwith this application as Annexure A-2 series.

3. In reply to the application, respondent nos. 1 to 5 have stated that there are 26 petitioners in this Company Petition no.145 of 2013 (hereinafter will be referred to as the said Petition).

4. The petitioner nos.2 and 6 have affirmed the said main petition on 2<sup>nd</sup> July, 2013 purportedly on behalf of other petitioners, however, have failed to disclose any Board Resolution of the petitioner no.1 company authorizing the petitioner nos. 2 and 6 to affirm or institute the said petition on its behalf and have also failed to bring on record

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any power of attorney or any authorization letter to show that the petitioner nos. 2 and 6 were authorized by other petitioners to affirm and file the said petition on their behalf.

4.1 The respondent nos. 1,2 and 5 have taken certified copies of all documents and Court pleadings filed with the Petition and came to the knowledge that no documents pertaining to purported authorization made by the petitioner nos.1 and 3 to 5 and 7 to 29 in favour of the petitioner nos. 2 and 6 was there. The respondent claims that petitioner nos. 2 and 6 were duly authorized by the petitioner nos. 1, 3 to 5 and 7 to 29 to institute the said petition on their behalf. In any event, the petitioner nos. 2 and 6 are not shareholders of and in the company.

4.2 The petitioner no.2 who claims to hold only 100 shares of and in the respondent no.1 company is under challenge. The petitioner no.6 is admittedly not a shareholder of the respondent no.1 company. The respondent claims that petitioners did not qualify the requisite qualification given in section 399 of the Companies Act 1956 to maintain the instant petition. The respondent nos. 1, 2 and 5 have filed a demurrer application in CA No.520 of 2013 where the affidavits are annexed, which have also been annexed with the demurrer application. The said demurrer application was heard wherein the issue was raised regarding the authorization of petitioner nos. 2 and 6. The petitioners at that time failed to rely on Power of Attorney and/or Board Resolution. The said application being C.A. No.520 of 2013 was heard and reserved for judgement before the erstwhile Member of Company Law Board.

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4.3 The respondents further contended that purported affidavit of authorization was never filed before the erstwhile Company Law Board on 3<sup>rd</sup> July, 2013 or on the date of the filing of the said petition. The respondent nos. 1 and 5 have taken certified copies of the documents from the erstwhile Company Law Board and at that time there was no such affidavit or authorization.

4.4 The said authorization was never a part of the pleadings. The petitioners have not referred to the said affidavit of authorization in their Notes of Arguments in respect of demurrer application. The respondents claim that affidavit of authorization reveals that petitioners have played fraud and therefore, the same is bad and should not be accepted.

5. The respondent further claims that in the purported affidavit of authorisation, there was no Board resolution of the petitioner no.1 company to show that the petitioner no.1 company has authorized the petitioner nos. 2 and 6 to affirm the said petition on its behalf.

6. Two outsiders have signed the purported affidavit of authorization, although they are not the petitioners in the said Petition. The petitioner nos. 13,14 and 15 have not signed the purported affidavit of authorization. The names and signatures of some of the petitioners were also not matching with names and signatures of purported affidavit of authorization. The said purported affidavit of authorization is a manufactured and fabricated document. The petitioners have tampered with the records of the Board by

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fraudulently changing the purported affidavit of authorization dated 3<sup>rd</sup> July, 2013 with another purported affidavit of authorization dated 2<sup>nd</sup> July, 2013. The said purported affidavit of authorization dated 2<sup>nd</sup> July, 2013 was allegedly filed before the Board to show that purported affidavit of authorization was affirmed and filed alongwith the main Petition which was filed on 2<sup>nd</sup> July, 2013. The petitioners have acted with an ulterior purpose and in evil nexus. Mischief has been played in filing the purported affidavit of authorization. No copy of the said purported affidavit of authorization was present in the record. The petitioners have tampered with the records of the Board by trying to change the date of filing. The petitioners now sought to rely on another purported affidavit of authorization having signature of petitioner nos. 13,14 and 15. The petitioners in order to file the purported consent letters of the petitioners nos. 13,14 and 15 purportedly showing authorization in favour of the petitioner nos. 2 and 6. The petitioners have tried to file the same by Supplementary Affidavit on 13.07.2015. But the respondents raised objection to the same and thereafter the petitioners took out the said purported application. The respondents have claimed that the instant application is not maintainable as the petitioner nos.2 and 6 have not been authorised by the authorised petitioners to file and affirm the said petition.

7. The applicants/ petitioners have filed rejoinder in reply to the affidavit filed by the respondents wherein the applicant/petitioners have reiterated the contents of application.

8. Heard the Ld. Counsels of the parties and perused the records. The petitioners have filed Company Application no.1160 of 2015 and has made a request that the

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application be treated as part of the main petition no.145 of 2013 and the same be considered at the time of hearing on the issue of authorisation in terms of the order dated 06.02.2015 passed by the erstwhile Chairman of the Board.

8.1 The petitioners have claimed that at the time of filing the Company Petition, the names and signatures of petitioner nos. 13,14, and 15 were available and obtained. However, inadvertently, the consent letter was filed alongwith the Company Petition no.145 of 2013 which did not contain the names and signatures. The petitioners/applicants claim that the consent letter containing the names and signatures of petitioner nos. 13,14 and 15 alongwith the names of petitioner nos. 10,18,28,29, 4 and 3 was supposed to be filed alongwith the Company Petition no.145 of 2013. Petitioners have contended that consent letter of the petitioners were obtained in two separate sets of papers. However, in one of the sheets, signatures of three petitioners, namely, (1) Jawahar Prasad (P-13), (2) Sonapati Devi (P-14) and (3) Laxman Prasad (P-15) were not obtained, though they had consented and signed on another sheet of paper but inadvertently due to clerical error, consent letter which did not contain the names of the petitioner nos. 13,14 and 15 was filed in place of the letter/sheet containing their signatures and petitioners had annexed the consent letter containing the names of petitioners nos. 13,14 and 15 as Annexure 'A-1'.

8.2 The main objections by the respondents are that the alleged documents are forged and these documents were not filed at the time of presentation of the petition. The respondents have also claimed that the consent of the alleged petitioners were not

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obtained in the matter and were not obtained at the time of filing of the petition. The petitioners have annexed all the documents alongwith the affidavit of the concerned persons with the instant application and have made the request that this application be made part of the Company Petition no.145 of 2013 but the respondents have vehemently opposed this application.

8.3 It is undisputed fact that demurrer application filed by the respondents is pending wherein the respondents have taken the ground of maintainability of the petition. It is also clear that the same demurrer application has been heard before the erstwhile Company Law Board but it was not decided upon and application is pending till date. The instant Company Application has been given with a request that this application be also made a part of the Company Petition no.145 of 2013 for disposal. The respondents had vehemently opposed the petitioners' Company Application on the ground that the documents annexed with the application are forged. At the stage of filing of documents, it cannot be seen whether the documents are genuine or not. It can only be seen at the time of hearing of demurrer application. At this stage, we are only concerned with the fact whether the proposed documents, which are annexed with the application, are relevant or not. As per claim of the petitioners, the alleged consent letter and authorization of the petitioners were obtained before the filing of the petition but inadvertently it was not annexed with the petition. At this stage, we cannot give any finding regarding the genuineness of the claim of the petitioners. However, the objection raised by the respondents may be seen at the time of disposal of demurrer application, which is pending. The documents annexed with the Company Application are relevant

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for disposal of the Company Petition, therefore, the Company Application no.1160 of 2015 deserves to be taken on record. Company application no.1160 of 2015 is being allowed. The company application alongwith documents annexed with application are taken on record.

8.4 It is made clear that by taking the application on record, it will not be presumed that the documents annexed with the instant application have been found genuine. Its genuineness will be adjudged at the time of hearing of demurrer application. In the circumstances mentioned above, the Company Application is disposed of accordingly,

9. No order as to costs.

  
(S.Vijayaraghavan)  
Member (T)

  
(Vijay Pratap Singh)  
Member(J)

Signed on this 6<sup>th</sup> day of at, 2016