

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI

IA 33/2016 in CP 10/2016

Coram: B S V Prakash Kumar, Member Judicial & V Nallasenapathy, Member Technical

In the matter of Companies Act 1956 under sections 397 & 398 r/w 404 & 403

Between

Sh. Satish Kumar Pawa & Others

..... Applicants/Petitioners

Versus

Jagat Agro Commodities Pvt. Ltd. & Others

... Respondents/ Respondents

Present on behalf of the parties:

1. Mr. Puneet Arora, Advocate for the Petitioners.
2. Mr. Sharan Jagtiani, Ms. Stuti Jain, Advocates for the R-2 to 4.

ORDER

(Heard on 21.09.2016)

(Pronounced on 26.09.2016)

The petitioners moved this IA seeking appointment of an interim administrator for takeover of management of R1 Company and to deal with its affairs of management, by holding meetings of its Directors, employees; to direct the interim administrator to file the monthly report with respect to affairs of R1 company before this Tribunal and for other orders which are deem fit in the circumstances of the case.

2. The petitioners filed main Company Petition u/s 397,398, r/w 402 of the Companies Act 1956 pleading that R2, who has complete control of R1 Company grossly mismanaged the affairs of the Company – diverted the stocks of the Company, obtained loan by falsely inflating the stock showing in the records. The petitioners further state that R2-4 have indulged in opening up business competing R1 business. The petitioners say that R1 Company has been run as partnership venture with two families – the petitioners group and R2-R4 group. This company was in fact incorporated in the year 1984, thereafter these two groups run this company for long, but whereas by seeing the respondents group indulging in gross mismanagement and fraud, and for the mutual trust in between the groups has gone down to the core, the petitioners are compelled to file this company petition.

3. On mentioning of this case, when the Principal Bench of Company Law Board heard this matter on 16-2-2016, it has ordered on the same day directing the respondents not to divert, transfer, or create any third party interest in respect to the assets including the stocks of the company and also not to withdraw or transfer the funds of the Company without prior permission of the Principal Bench.

4. From the same order, it has been further transpired that when the petitioners side made an allegation that stock worth of Rs 33crores has been shown in the balance sheet as on 31-01-2016 and pilferage of stock taken place, the respondents' counsel appraised the Bench that stock statements have been deliberately fudged for the purpose of obtaining Bank loan and for availing enhanced credit limits which has been disputed by the counsel of the petitioner.

5. Then on seeing the allegations and counter allegations, the Hon'ble Principal Bench, having noticed that public interest being involved apart from the interest of the company, directed SFIO to investigate and find out the position of stock in the godown, accounts, stock register, Bank statements and all other matters. In pursuance of the same, SFIO filed its interim reports and also final report on 21-9-2016 along with a covering letter stating that there are Resolutions signed by both the parties for availing Bank loans on showing false stock position.

6. Though it cannot be now decided as to whether the petitioners group or the respondent group indulged in fudging accounts to embezzle the funds of the company, it can safely be inferred that the argument of both side counsel is that the loans were taken and credit limits were raised basing on fictitious stock positions, the only difference in their argument is that, the petitioners counsel says R2-4 indulged in perpetuating fraud, the Respondents counsel says, the petitioners indulged in doing fraud, though the arguments are different, the substance of both sides is the loans were availed on showing false stock position and fraud has been perpetuated by fudging accounts. So for saying loans were obtained on showing false stock position and the accounts have been fudged, this Bench need not labour by going through paper by paper of material brought in by the parties. Their averments and arguments are enough

to say that money was swindled from the company by fudging accounts and by taking loans and increasing credit limits by showing false stock position.

7. Moreover, for the report of SFIO having said that Resolutions were passed by both the parties in availing loans and credit limits, it is not at all safe to leave this company in the hands of these parties in a company where large scale fraud has been taken place. This Bench is therefore of the opinion that the only way to protect the interest of the company and the public interest through Banks is to appoint a responsible person either as an Administrator or as Chairman with veto powers in Board meetings and the General meetings notwithstanding the outcome of the Resolutions that the petitioners group and the respondents group pass.

8. Though the petitioners' counsel and the respondents' counsel broadly agreed for appointment of Chairman with veto powers, the petitioner counsel has a Caveat for entire administrative control of the company shall vest with the Chairman and the respondent counsel has a Caveat raising an objection for conferring administrative control to the Chairman and for appointment of a nominee of Consortium of Banks led by State Bank of Patiala in the Board or the committee, as the case may be, constituted with the Chairman.

9. On seeing the riders raised from either side for appointment of Chairman, this Bench, considering the company's interest and public interest as paramount, hereby appoints Hon'ble Mr. Justice S. K. Aggarwal, Retired Judge of Delhi High Court, Contact No. 09818000270, as Chairman with one nominee from the petitioners' side and one nominee from the respondent side and a nominee from the Consortium of Banks led by State Bank of Patiala for a period of six months or until the matter is resolved, whichever is earlier.

10. It is further clarified that Chairman will exercise veto powers over any decision in the company notwithstanding the proposals of the nominees of the petitioners group or the respondents group or the bank nominee.

11. The Chairman appointed is from Delhi. The reason for appointing chairman from Delhi is though the company registration is at Mumbai, the parties being from Delhi, the affairs of the company being managed from Delhi, and the Bankers also being from Delhi, it is obviously conducive to the parties as well as the chairman to manage the affairs from Delhi, rather from Mumbai.

12. To have general idea over the company to the chairman, this Bench is of the opinion that the investigation done by SFIO is helpful to the Chairman to run the company, therefore, the copy of the SFIO report has also been sent to the Chairman.

13. The respondents counsel argued that the SFIO report shall not be taken into consideration unless an opportunity is given to them to go through the report and place their submissions over the said report, on his submissions, this Bench hereby clarifies that this Bench has not decided the rights of either respondents or the petitioners except appointing a chairman looking at the inference emanating from the allegations and counter allegations heaped against each other, we don't see any merit in the argument of the respondents counsel saying that unless an opportunity is given to the parties, the findings of SFIO shall not be considered. The only point taken into consideration that both the parties are involved in availing loans and credit limits by passing resolutions with the consent of both the parties, which any way is apparent in the allegations of the parties. It is not the case of the petitioners that they are not parties to the resolutions passed, so is the case with the respondents.

14. Since, it is not possible for the Chairman to look into specialised subject, that is accounts of the company and take necessary decisions seeing figures of the company, the Hon'ble Chairman is suggested to appoint an Independent Chartered Accountant of his choice to assist him in managing the affairs of the company. The chairman is also at liberty to fix the remuneration of the Chartered Accountant applying his discretion looking at the financial position of the company and working requirement of the Chartered Accountant.

15. As to remuneration of the Chairman, it is hereby fixed as two lakhs of rupees per month until this assignment continues.

16. This Bench makes it clear that the arrangement above will not absolve any of the personnel of the company from the investigations if any started against them or if any likely to start. And, this arrangement will not have any bearing on the actions which are open to the regulating authorities, investigating authorities and Banks for their redressal or to take criminal action against the culprits, if any.

17. The Chairman is hereby suggested to send bimonthly report enabling this Bench to know progress the Company making.

Accordingly, IA 33/397 & 398/2016 is disposed of.

sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)

sd/-

V. NALLASENAPATHY
Member (Technical)