

Court-II

Mentioning

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. No. 119 / 2017

Present: 1. Hon'ble Member (J) Shri Vijai Pratap Singh
2. Hon'ble Member (T) Shri S. Vijayaraghavan

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 10th March, 2017, 10.30 A.M

Name of the Company		Amit Kumar Gupta. -Versus- LGW Limited & Ors.	
Under Section		241/242	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

Mr. Ramesh Banji, Sr Adv

Mr. DN Sen, Adv

Mr. T. K. Verma, Adv.

}

Petitioners

}

T. K. Verma
10/03.

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

C O R A M

**CP No.119 of 2017
Present : Shri V. P. Singh
Hon'ble Member (J)**

**Shri S. Vijayaraghavan
Hon'ble Member (T)**

In the matter of the Companies Act, 2013

And

In the matter of Section 241 and 242 of the said Act
And

In the matter of LGW Limited

And

In the matter of:

1. Anil Kumar Gupta

..... Petitioner

-Vs-

1. LGW Limited

.....Respondent No.1

2. Sanjay Kumar Gupta

.....Respondent No.2

3. Anurag Gupta

..... Respondent No.3

4. Lucia Gupta

..... Respondent No.4

5. Jinesh Shah

..... Respondent No.5

Present on behalf of the Parties:

1. Mr. Ratnanko Banerjee, Sr. Advocate

2. Mr. D. N. Sharma, Advocate

3. Mr. T Khaitan, Advocate

|
For the Petitioner
|

R



O R D E R

(Date of hearing 10/03/2017)

Company Petition being C.P. No.119/2017 was filed in the office of NCLT on 08/03/2017. Petitioner Counsel has filed a copy of the notice which was sent to the Respondents which shows that Petitioner has given notice to the Respondent Company that he will be mentioning the case before NCLT, Kolkata Bench on 10/03/2017 at 10.30 a.m. Case was not listed, therefore in the morning at 10.30 Petitioner Counsel mentioned the case in the Court and made a request that as the matter is urgent, the case may be taken up at 12 noon and he could serve the notice on the Respondents regarding this. After taking leave of the Court, he served the notice on the Respondent Company through e-mail whereby the information was sent to the Respondent Company that matter will be taken up on 12 noon today. Though the case was not listed, considering the urgency of the matter, we have taken up the matter today i.e. 10/03/2017. Petitioner Counsel was present today but nobody was present on behalf of the Respondents. Heard the Ld. Counsel of the Petitioner.

It appears from the record that this Petition has been filed u/s 241 and 242 of the Companies Act, 2013. As per averment of the Petition, a family business commenced in 1949 under the partnership deed dated 20/04/1949 which was annexed at page-466 of the Company Petition) under the name and style of 'Laxmi Glass Works' and after the grandfather of Petitioner died his father Late Kali Charan Gupta, became the sole

H



proprietor of Laxmi Glass Works till his death on 23/02/1987. After the death of Kali Charan Gupta, his four sons continued the family business of Laxmi Glass Works as a partnership concern with each having 25% share. It is thereafter that the business of the partnership firm was shifted to the company upon its incorporation in the year 1984.

Petitioner holds 8,78,946 shares in R-1 Company equivalent to 17.58% of the valid, issued, paid-up and subscribed share capital of R-1 Company. Thus the Petitioner is entitled to institute and maintain the Company Petition on the grounds of oppression and mismanagement. Petitioner has further stated that R-2 is the elder brother and also Karta of the members of Gupta family. R-2 holds 27,50,000 shares in R-1 Company which is equivalent to 55% of the valid, issued, paid-up and subscribed share capital of the R-1 Company. R-3 is the son of R-2 who holds 13,70,624 shares in R-1 Company equivalent to 27.41% of valid, issued, paid-up and subscribed share capital of the R-1 Company. R-4 is the wife of R-3 who is not a shareholder but has been recently wrongfully and illegally appointed as a director of R-1 company with effect from January 1, 2016. R-5 is a Company Secretary of R-1 Company who has aided and abetted the wrongful acts and misdeeds of R-2 to R-4. Petitioner Claimed that R-1 is a family company where not a single shareholder is outside the Gupta family which is all through a closely held family company in the guise of a partnership. Petitioner has claimed that R-2 to R-4 are now seeking to wrongfully claim exclusive control over R-1 Company and treating as if R-1

6



Company is their personal property and with this objective are seeking to oust Petitioner as a director from the board of R-1 Company. Petitioner has further stated that he has recently received a special notice dated 06/02/2017 issued by R-2 as a requisitionist under Section 11,115 and 169 of the Companies Act, 2013 intending to move and ordinary resolution to seek removal of Petitioner as a director at an EOGM proposed to be held on 15/03/2017. The impugned special notice issued by R-2 to R-1 dated 06/02/2017 has been annexed at page-484 of the Company Petition. Petitioner has sought interim relief on the ground that special notice which has been issued regarding removal of Petitioner from the directorship shows that EOGM has been called on 15/03/2017 at 2 p.m. Petitioner claimed that the alleged notice issued by R-2 is illegal and null and void as the procedure enshrined in Sections 100, 102, 115 and 169 of the Companies Act,2013 has not been complied with. It is also alleged that special notice issued by R-2 dated 06/02/2017 does not disclose any reasons for seeking removal of Petitioner as director nor sets out the matter for consideration for the company to debate upon. Petitioner further alleged that the purported special notice dated 06/02/2017 which is at page-484 of the Company Petition, is contrary to the spirit of corporate democracy and principles of partnership under which R-1 Company was incorporated. Petitioner has pointed out that notice dated 06/02/2017 is a special notice with intention to move resolution in connection with removal of director which is pursuant to Section 169 read with 115 of the Companies Act, 2013 with the removal of Mr. Amil Kumar Gupta as a director of the R-1 Company. In this notice

81



no explanatory statement is given. Petitioner has also filed notice of board meeting which is at page 484 of the Petition which shows that on 08/02/2017 i.e. just after one day of issuing special requisition by R-2, notice of board meeting was issued on EOGM by R-2 for removing Amit Kumar Gupta as a director of the company. This notice shows that board meeting was scheduled for 17/02/2017. It also appears that Petitioner filed a representation against the proposed removal as director of the R-1 Company. It also appears from the record that EOGM has been called with a specific business to remove the Petitioner as a director of the R-1 Company which is proposed to be held on 15/03/2017 at 2 p.m. So Petitioner prayed that if the interim is not passed, he will suffer irreparable loss and he will be removed from the directorship illegally and the Petition shall become in fructuous which has been filed under Section 241 and 242 of the Companies Act, 2013.

It is necessary to give opportunity to the Respondents for filing reply. On 15/03/2017 the meeting is schedule to be held for removal of the Petitioner from the directorship of the R-1 Company. As per averment of the Petition, R-1 is a Gupta family company which is managed and controlled by bunch of Gupta family members and Petitioner's holding in the company is 17.58% of the valid, issued, paid-up and subscribed share capital. It is closely held family company which runs in the guise of partnership. Petitioner has taken a legal ground that removal of director is a special business and Section 102 of the Companies Act, 2013 provides that

R

✓

attachment of explanatory statement is required with issuing notice of EOGM for concerning special business. Section 102 (2)(a)(i) provides the cases which can come under general business and Section 102 (2)(b) provides that all other business except which has been defined Section (2)(a)(i) shall be deemed special business. Removal of director is not defined in Section 2(1)(a). Therefore, it comes under the special business and as per requirement of 102 of the Companies Act, 2013, for such business explanatory statement is necessary to be issued. Notice which is at page 491 of the Company Petition does not contain the explanatory statement for issuing notice for removal of Mr. Amit Kumar Gupta from directorship. Prima facie case is made out on account of the alleged notice which does not contain explanatory statement.

ORDER

We are of the view that EOGM should not be stayed. In the interest of justice we do not want to stay the proceeding of EOGM but we make it clear that if any EOGM takes place then its resolution shall not be given effect without taking permission from the Tribunal. It is further directed that if the EOGM takes place, then resolution of that meeting should be submitted to the Tribunal within 3 days of the meeting. Petitioner is directed to serve the order of the court to the Respondents through Speed Post and e-mail and file affidavit regarding service of notice within 7 days. Respondents may file their reply within 7 days and thereafter rejoinder, if any, be filed within 7 days.

HC



✓

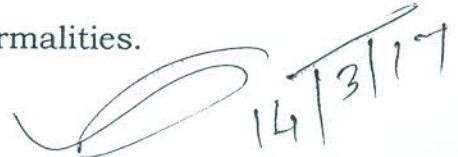
List the matter for hearing on 29/03/2017.

82

Urgent Photostat copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.



[S. Vijayaraghavan]
Member (Technical)



[Vijai Pratap Singh]
Member (Judicial)