

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

CA No. 614/2013
In CP No.187 of 2013

Ms. Manorama Kumari
Hon'ble Member (J)

In the matter of the Companies Act, 1956 : Sections 111, 397, 398, 399, 402, 403 and 406 and other relevant provisions of the Companies Act, 1956

In the matter of : Nand Kishore Bhutra Petitioner/ Applicant
Vs.
Mangalahat Construction & Builders Pvt. Ltd. & Ors
..... Respondents/ Non-Applicant

Parties on Record :

Mr.Jishnu Chowdhury, Advocate		
Ms. Nitu Poddar, PCS		For the Petitioners

Mr. Ratnanko Banerji, Senior, Advocate		For the Respondents No. 1 to 5
Mr. DN Sharma, Advocate		
Mr. Raj Ratna Sen, Advocate		
Mr. Saheb Ali, PCS		

Mr. Premdip Ray, Senior Advocate	For Gajanand Agency Service Ltd.
Mr. Aditya Kanodia, Advocate	
Mr. S Sarkar, Advocate	
Mr. Debasish Das, Advocate	

Mr. Sunok Mitra, Advocate	For Unipon Merchants (P) Ltd.
Mrs. P Chowdhury, Advocate	

Mr. Reetobrata Mitra	For Gajanand Agency Service Ltd.
Mr. Prasanta Naskar	

Dates of Hearing : 21st September, 2016

Date of Order : 7th November, 2016

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ORDER

(Date of hearing – 21st September, 2016)

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The instant Company Application bearing No. 614 of 2013 is filed by the Petitioner/Applicant on 24-10-2013, with a prayer to implead two person, namely, Shri Abdul Hossain Laskar and Shri Tanmoy Dey who have been appointed as additional two Directors of the Company, Mangalahat Construction & Builders Pvt. Ltd. on 29-08-2013.

The petitioner submitted that the at the time of filing of the Company Petition, they were not aware of the appointments/inclusion of the above said two person as the additional Directors of the Company and as such they are not arrayed as party respondents to the Company Petition which has been filed on 30th August, 2013.

The Petitioner further submitted that they have come to know with regard to appointment of above named Shri Abdul Hussain Laskar and Shri Tanmoy Dey only on October 09, 2013 while going through the portal of Ministry of Company Affairs and in their utter surprise they also found the uploaded E-Form 32 i.e. notice of appointment of Directors which was purportedly filed on September 19, 2013 showing the appointment of above said two persons as additional Directors of the Company on August 19, 2013.

The said appointments are ought to be supported by Board resolution and the date of Board meeting is/was purportedly shown as 19th August, 2013.

The Petitioner submitted that the said appointment is after thought i.e. after the receipt of the order of injunction passed by then CLB on 3rd September, 2013. As such, by showing the back dated Board resolution, the respondents have filed the E-Form 32 mentioning the fake date of meeting of the Board of Directors as 19th August, 2013 and fake appointment of above said two person as Directors.

The petitioner further submitted that the date of the Board meeting has been deliberately shown as 19th August, 2013 so as to bring the same within the period of 30 days stipulated for filing of the Form 32 as is required under the law.

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The petitioner further submitted that there was no meeting of the Board of Directors held on 19th August, 2013 and there was no apparent reason for which the expansion of the Board of Directors was required at all.

The petitioner further submitted that the nature of the Company's business does not need any active management. The Company is simply owning a property and is currently not carrying out any developmental activities. Hence, there is no reason at all to appoint any additional Director(s).

The petitioner submitted that the said act of the respondents is prejudicial and is against the interest of the petitioner as well as to the Company and the induction of the above said two persons are/were done in violation of the principles of co-ownership existing in the Company.

The petitioner further submitted that the Annual General meeting of the Company is not held till the filing of the Company Application on 24-10-2013 and the petitioner(s) have not received the accounts nor any notice calling the Annual General meeting of the Company.

The petitioner further submitted that on perusal of the list of Companies, it is found that those two persons, namely Shri Aftab Hussain Laskar and Shri Tanmoy Dey, are also shown as Directors in Akhileshwar Properties Ltd.(hereinafter referred to as Akhileshwar) and Basundhara Tower Pvt. Ltd (hereinafter referred to as Basundhara).

Akhileshwar and Basundhara are both apparently the parties, who in collusion with the Respondent(s) and Sunderlal Dugar Group have caused this prejudice to the petitioner.

The petitioner further submitted that the above said Basundhara is the Company which had challenged the Court decree passed in favour of Mangalahat and Gajanand(respondents). However, Basundhara has lost the case against the Company in the High Court at Calcutta. It is further alleged that Basundhara has now joined hands with Sunderlal Dugar Group so as to cause further prejudice to the petitioner and the Company and deprive the petitioner of his rights.

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The petitioner submitted that he acted and filed the petition in due diligence at all points of time and there is no delay and/or negligence on the part of the petitioner to bring the aforesaid fact on record and if their application is not allowed then it will cause prejudice to the interest of the petitioner and it will also cause multiplicity of litigation.

On the other hand, if the above said two persons are allowed to be impleaded, it is not going to prejudice the interest of the respondent(s) as it is an admitted fact and the dispute is with regard to the date of appointment. As such, under such circumstances, to come to the just decision, it becomes expedient to implead the above said two persons, namely Shri Aftab Hussain Laskar and Shri Tanmoy Dey as parties to the case.

On the other hand, the respondents submitted that the Application is not maintainable and is barred by law as there is suppression of material facts.

The respondents also submitted that the petitioner has obtained the interim order on 03-09-2013 ex parte by suppression of material fact and as such the same is liable to be vacated and the Application be rejected.

The respondents further submitted that the proposed amendment to the Company Petition is an afterthought and will prejudice the right of the respondent(s) as the proposed addition of the parties is prejudicial to the interest of the respondent(s) and as such, the Application should not be permitted/ allowed.

The respondent(s) further submitted that the petitioner wants to unnecessarily drag the other parties to the present proceeding as the proposed Respondent(s) are not necessary or proper parties to the proceeding.

They have also submitted that Shri Abdul Hussain Laskar and Shri Tanmoy Dey are not the outsiders as alleged and/or the shares have been transferred to them complying with the provisions of law and that they have been legally appointed as Directors of the Company.

The respondent(s) further submitted that the appointments of the above named two persons as Directors have been made in the Board meeting held on 19-08-2013 and due intimation was given to the Registrar of Companies by filing requisite Form No. 32.

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The respondent(s) also submitted that these appointments are not made as an afterthought and/or after getting any injunction order from the then Company Law Board.

The respondent(s) have denied all the allegations made in the petition and submitted that the appointments of the aforesaid two persons are legal and was done after following the due process of law and they were/are appointed before the filing of the Company Petition, but the petitioner had come with this application to fill up the lacunae on their part though it was in the knowledge of the petitioner, before filing of the application.

Heard both side at length.

I have gone through the allegations levelled in the Company Application, reply filed by the respondent(s), rejoinder submitted by the petitioner/applicant, arguments by the Ld. Lawyers on behalf of the petitioner/applicant as well as on behalf of the respondent(s)/non-applicant(s).

On perusal of the records, as well as the reply of the respondents, it is observed that the respondent(s) himself admitted that the above named two persons Shri Abdul Hussain Laskar and Shri Tanmoy Dey are not strangers to the Company and if it is so, then in my considered opinion, it is necessary to add them as Parties to the main Company Petition bearing No. 187 of 2013, so long it does not change the nature and character of the Company Petition.

Further, on perusal of the record, it reflects that notice of appointment of above said two person, as additional Directors of the Company, has been filed on September 19, 2016 i.e. much after the filing of the Company Petition.

There have been allegations and counter allegations in the petition. Since the relief is wholly equitable in nature, I find that the equity is in favour of the petitioner/applicant and if the Application is not allowed, then it is likely to result in multiplicity of the proceeding and injustice will cause to the Applicant/Petitioner and/or this may affect adversely to come to the just decision of the case.

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Though the merit of the case are not to be gone into at this stage while considering the Application for impleading the additional parties to the Company Petition No. 187 of 2013, which is subsequent to the date of filing of the Company Petition, it is settled in law that subsequent event which is necessary for the purpose of proper and effective adjudication of the case, need to be taken into consideration.

For the allegations of oppression and mismanagement of the Company as detailed in the petition, the proposed impleadment will not constitutionally or fundamentally change the nature and character of the petitioners' case in the CP nor would it cause any prejudice to the respondent(s).

Further, if the impleadment of the parties are not allowed, then there is likelihood of multiplicity of the proceeding, leading to injustice to the Applicant as well as to the respondent(s).

In view of the foregoing, the Company Application No. 614 of 2013 is hereby allowed. Both the above named persons, Shri Abdul Hussain Laskar and Shri Tanmoy Dey are allowed to be impleaded as newly added respondents to the Company Petition No. 187 of 2013, without changing the nature and character of the Petition.

The Applicant is allowed to file the amended Title page of the Company Petition within two weeks with a copy of the amended CP to all the respondent(s) including the added parties and file proof of service with this Bench.

The reply to the amended CP, if any, be given by the respondent(s) including the added parties, within two weeks thereafter.

No order as to costs.

MANORAMA KUMARI
MEMBER(J)