

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No. 108/2018

CORAM:

Present: SHRI M.K. SHRAWAT
MEMBER (J)

SHRI BHASKARA PANTULA MOHAN
MEMBER (J)

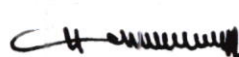
ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 25.01.2018

NAME OF THE PARTIES: Aspha Packaging Pvt.Ltd. & Anr.
V/s.
Aspha Board Pvt.Ltd.

*The Respondent-Advocate
gives an undertaking
not to hold the
meeting
efficiency
is
have less*

SECTION OF THE COMPANIES ACT: 241-242 of the Companies Act, 2013

S. No. NAME DESIGNATION SIGNATURE

① Hemant Sethi Advocate for Petitioner 

*Dhirsaj Mhetre
Smriti Tewari
Kanick Kejriwal
Deepali Menghwarani*

Adv for Respondent

*Send to R2
P-1
Dg (128)*

ORDER

CP 108/241-242/NCLT/MB/MAH/2018

1. The case of the Petitioner is that it is a Company incorporated under the Companies Act and having 5,150 shares which is 10.30% of the total stake in the Respondent No.1 Company. Petitioner No.2 holds 670 equity shares in his individual capacity and hold 10,089 equity shares as First Joint-holder with Mrs. Anjali M. Kharadkar, owns and holds a total of 8,831 equity shares as Second Joint-holder with Mr. Amol Chandekar, Mrs. Anjali M. Kharadkar, Mr. Jagdish Shankar Moley, Mr. Maruti Shivram Chavan and Mr. Asitosh Kharadkar respectively. It is also contended that the Petitioner No.2 currently owns and holds 21.52% of the total issued, subscribed and paid up share capital of the Company, either in his individual capacity or as a First Joint-holder, and owns and holds 17.66% of the total issued, subscribed and paid up share capital of the Company as Second Joint-holder.

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(Contd....2.)

2. The Respondent No.1 Company was incorporated on 01.04.1986 with an authorised share capital of Rs.50 lakh divided into 50,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the Respondent No.1 Company is Rs.50 lakhs divided into 50,000 equity shares of Rs.100/-. The Company was originally promoted by Mr. Ishwarlal Mehta and Mr. Makarand Kharadkar who were the initial subscribers and the First Directors of the Company. The main objects of the Company is as follows:-

"To manufacture, process, treat, coat, laminate, convert, cut, shred, reuse, recycle, dispose off, buy, sell, import, export, distribute, stock or trade in pulp, paper and paper boards including presspan paper and board, di-electric paper and board, leather oil paper, vulcanised fibre board or such other paper and speciality paper base paper and boards"

3. It is alleged in the Petition that when the Petitioner No.1 applied for duplicate share certificates from the Respondent No.1 Company with respect to some shares which were purported to have been transferred to the Petitioner No.2, there was no response from the Company. It is an admitted position that even though the original share certificates are not available with either Petitioner No.1 or Petitioner No.2, the Petitioner No.1 is continued to be shown as a shareholder in the Register of Members. On 24.12.2013, an Extra-Ordinary Meeting of the Company was held and the Petitioner No.1 was served with a Notice of the said Meeting. During the said Meeting Respondent No.2 and 3 sought to move a Resolution to increase the authorised share capital to Rs.1,10,00,000/-. However, majority shareholders voted against the said Resolution seeking to increase the authorised share capital. Petitioner No.1's efforts in not finding share certificates prompted him to issuer a letter dated 09.04.2017 for which there was no response from the Respondent Company, which act has been apprehended as an "oppressive" act prejudicial to the interest of the Company and the Petitioners.
4. On 21.12.2017 the Petitioner No.1 and 2 along with Mrs. Anjali Makarand Kharadkar, Mr. Asitosh Makarand Kharadkar and Mr. Amol Narayan Chandekar, all being shareholders of the Company addressed a requisition notice to convene an Extra-Ordinary General Meeting as per section 100 Sub-section (2) of the Companies Act 2013 with the object as follows :-

- "1. Appointment of Mr. Makarand Shrinivas Kharadkar (DIN: 00529611) as director of the company.*
- 2. Appointment of Mr. Asitosh Kakarand Kharadkar (DIN: 03319878) as director of the company.*
- 3. Appointment of Ms. Sayli Amol Chandekar (DIN: 08022610) as director of the company."*

(Contd....3.)

5. On 4th January 2018, pursuant to the requisition Notice, the Company gave Notice of the Extra-Ordinary General Meeting to be held on 31.01.2018 at the Registered Office of the Company to transact the following business:-

"Item No.1

Appointment of Mr. Makarand Shrinivas Kharadkar (DIN: 00529611) as Director.

Item No.2

Appointment of Mr. Asitosh Makarand Khradkar (DIN: 03319878) as Director.

Item No.3

Appointment of Ms. Sayli Amol Chandekar (DIN: 08022610) as Director.

AS PROPOSED BY BOARD OF DIRECTORS:

Item No.4

Increase of Authorized Share Capital of the Company from Rs.50 lac to Rs.1.50 Crore.

...

Item No.5

Adoption of new set of Articles of Association as per provisions of Companies Act, 2013".

In the said Notice of the Extra-Ordinary General Meeting, in the explanatory statement attached to the Notice a categorical statement is made in which the Management of the Respondent No.1 took a stand that the shares of Petitioner No.1 have already been transferred way back in 2006-07 and the Board of Directors have decided not to send the Notice of Meeting to the Petitioner No.1. It has also been stated that the Petitioner No.2, his relatives have not cooperated with the Management of the Company in times of difficulties and now are seeking to alter the composition of Directors when the Company is doing well. It is also stated that the Petitioners through the said Notice are trying to take control of the Company.

6. The above actions on the part of the Respondents have triggered a situation forcing the Petitioners to come to this Tribunal for an appropriate reliefs u/s 241-242 and 244 of the Companies Act with a Prayer to grant Interim Reliefs as follows:-

"(a) direct the Respondents to send the Petitioner No.1 notices in relation to the Extra Ordinary General Meeting (EOGM) scheduled to be held on 31st January 2018 and recognize the Petitioner No.1's voting rights in the EOGM scheduled to be held on 31st January 2018 associated with 5150 equity shares that the Petitioner No.1 holds of the Company;

(b) restrain the Respondents from transacting any business in the EOGM scheduled to be held on 31st January 2018 or any subsequent Annual General Meetings (AGM)/ Extra Ordinary General Meetings (EOGM), without recognizing Petitioner No.1's voting rights in the EOGM scheduled to be held on 31st January, 2018 or any subsequent Annual General Meetings (AGM)/ EOGM associated with the 5150 shares it holds in the Company;

(Contd...4.)

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- (c) directs the Respondents to issue duplicate share certificates to the Petitioner No.1 with respect to the 5150 shares the Petitioner holds in the Company'
- (d) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

7. On the issuance of Interim Reliefs, Heard both sides at length. The Counsel for the Petitioner pressed for Prayer No.(a) and (c) as Interim Reliefs while the Counsel for the Respondent stated that he would not hold the Meeting until further Orders of this Tribunal. It has also been stated that the Petition has been served on them in the recent past and no reply could be filed. The issuance of Injunction at this stage appears to be inappropriate for the reason that the entire facts and circumstances of the case are not fully available before this Tribunal and granting Injunction, that too, a mandatory Injunction allowing the Petitioners to attend and vote in the ensuing Meeting amounts to pre-judging the Merits of the case and also amounts to granting of final relief even without hearing the Respondents completely. But at the same time, it can also be seen that Petitioners and their group appears to be holding majority stakes in the Company even though the Respondents group is a minority stakeholder. Any decision either in favour of the Petitioners to attend and vote in the Meeting or the decision that allows the Respondents to illegitimately hold the Meeting and increase the share capital of the Company with a mala fide intention to bring down the stakes of the Petitioners' group into a minority would not be in the best interest of the Company, since the same is a going concern and no allegation has been made in the Petition with regard to misappropriation of funds or any instances of mismanagement. But there is a clear indication from the side of the Respondents to keep the Petitioners at bay from involving in the activities of the Company.

8. Having seen the entire background of the case with the help of material available on record and from the submissions made by the Counsel of the both sides, we hold as follows:-

- (a) That the Extra-Ordinary General Meeting to be held on 31.01.2018 is stayed.
- (b) Respondents are restrained from holding any further ^{General} Meetings without the permission of this Bench.
- (c) The Respondents shall furnish its Minutes of the Board Meetings and Monthly Statements of Income and Expenditure to this Bench, without fail, after serving a copy on the other side.
- (d) Respondents shall not act in any manner contrary to the interest of shareholders which according to this Bench, the shareholders means the shareholders as projected in the Register of Members.

9. The Respondents are directed to file their reply within 15 days and Rejoinder, if any, to be filed within 15 days thereafter. The matter to be listed for hearing on 12.03.2018.

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

Date : 25.01.2018

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Sd/-

M.K. SHRAWAT
Member (Judicial)