

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

CA No.01 of 2014

In

CP No.109 of 2012

(TP No. 195/HDB/2016)

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Date of Order: 03.11.2016

Between:

1. Mr. P. Ram Bhoopal
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
2. Mr. G. Vishnu Bhoopal,
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
3. Mr. Sree Ram Reddy
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
4. Ms. Sarojini Sree Ram Reddy,
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
5. Ms. Saraswathi Priya Reddy
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.



6. Ms. Tripti Reddy
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
7. Mr. Giridhar Reddy
Flat No. 303, Sree Matha Nilayam,
Arinagar Colony, Kesava Nagar,
Huderabad-500073

...Applicants/Petitioners

AND

1. Pragnya Riverbridge Developers Limited
305, 3rd Floor, Topaz Building,
Amrutha Hills, Panjagutta
Hyderabad-500082.
2. Pragnya Capital I Private Limited
C/o. IMM Limited, Les Cascadas,
Edith Cavell Street
Port Louis
Mauritius.
3. Mr. Subba Rao Dukkipati
Plot 143/A, Road No.10,
Jubille Hills,
Hyderabad-500033.
4. Mr. Gopal Menon
140, Franklin Street,
Apt 3A, New York, 010013,
United States of America.
5. Mr. Padmanabhan Balasubramanian
6-3-787, Flat No.509, Royal Pavilion,
Next to RBI Staff Quarters,
Ameerpet,
Hyderabad-500016.



6. Mr. Talatam Srinagesh
Plot No.269, 2nd Floor,
Road No.12, Mla Colony,
Banjara Hills,
Hyderabad, 500034

...Respondents/Respondents

Counsel for the Applicants/Petitioners:

Shri V. Harish Kumar

Counsel for Respondents No.1 to 6:

Shri S. Ravi, Senior Counsel

Mr. H. Rajesh Kumar

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)



ORDER

(As per Rajeswara Rao Vittanala, Member (J))

1. The Company petition bearing No. 109 of 2012 was initially filed before the Hon'ble Company Law Board, Chennai Bench, Chennai. On the constitution of NCLT Bench at Hyderabad Bench for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding it.
2. The CP No. 109 of 2012 was filed by Sh. P.Ram Bhoopal and 6 others , under Sections 111A, 237, 397, 398, 402, 403, 406 r/w Schedule XI of the Companies Act, 1956 by interalia seeking to regulate the conduct or affairs of First Respondent Company in future; to direct the respondents to take suitable steps to demerge the non-residential portion of land in favour of entity owned and managed by petitioners; to declare the resolution of the Board



Meeting held on 05.11.2012 as null and void, etc.

3. The brief facts leading to the filing of present application are as follows:

- i) The Company Law Board passed the following Interim Order in the CP on 02.12.2013 "I am of the view that the said holding of the Petitioners is a substantial shareholding and equity demands to continue the directorship from the Petitioners ground on the Board of R1 Company. In case, the respondents taken any decisions including removal of the 1st Petitioner in the said EOGM, the same is kept in abeyance until further orders. The 1st Petitioner shall continue as Director of the Company until further Orders. The respondents shall maintain status quo in respect of the share holding pattern of the Company prior to the EOGM dated 16.11.2013."
- ii) In spite of the said interim order, the respondents removed 1st Applicant/Petitioner as Director by not re-appointing him at Annual General Meeting. It is stated that the 1st Applicant is only representative of the Applicant's group, who was on the Board of the Company, though he was not allowed to exercise his duties and rights as Director by respondents.
- iii) In the above circumstances, the Applicants/Petitioners have filed the present CA under Section 10E and 403 of the Act read with Regulation 44 of the Company Law Board Regulations, 1991 by seeking the Tribunal to direct the respondents to re-instate the 1st Applicant as Director of the 1st Respondent Company and file necessary forms with Registrar of Companies.



- iv) The Company Law Board has passed an order dated 01.09.2015 by interalia holding that the petitioner was admittedly not continuing as Director as he has also filed CA No. 1 & 2 of 2014 by seeking a direction to re-instate the 1st Petitioner as Director of Respondent No.1 company and the order of the Bench dated 02.12.2013 is no longer in operation, especially with reference to continuation of the 1st petitioner as Director.
- v) Aggrieved by the said order dated 01.09.15, the petitioner of CP No. 109 of 2012 have filed Company Appeal bearing No. 10 of 2015 under Section 10(f) of the Companies Act, 1956 before the Hon'ble High Court of judicature at Hyderabad for the State of Telanagana and the State of Andhra Pradesh . And the same was disposed of by an order dated 28th September, 2015 by directing the CLB to dispose of CA No. 1 & 2 of 2014, within two months from the date of receipt of copy of the order, after hearing both sides.
- vi) Subsequently, the said CAs were listed on 17.12.15 and it stands adjourned at the request of both the parties to 18.01.16 for hearing since pleadings stated to be completed. Subsequently, the case was posted on 18.01.16, 16.02.16 and 29.03.16 before the CLB, Chennai Bench, and it was further adjourned to 20.06.16 at the request of counsels for the petitioner/respondents.
- vii) After the constitution of NCLT Bench at Hyderabad for the States of Telangana and Andhra Pradesh, the case was listed before the Bench on 29.07.16, 17.08.16, 31.08.16, 26.09.16, 07.10.16, 18.10.16, 21.10.16, 25.10.16 and lastly on



26.10.16. This Bench also issued notice on 21.09.16 to both the parties when none appears for the parties.

4. Heard Shri V. Harish Kumar, counsel for Petitioners and Shri S. Ravi, learned Senior Counsel along with Sri H. Rajesh Kumar, for Respondents, and have carefully perused pleading of the parties and materials filed in their support.
5. The learned counsel for petitioner, while reiterating the contentions raised in his application, has further submitted that aggrieved by violation of the interim order dated 2.12.13, he has also filed CC No.1458 of 2015 in CP No.109 of 2012 before the Hon'ble High Court of Judicature at Hyderabad and, also filed APPL 899 of 2015 by seeking a direction to re-instate the first petitioner as Director of 1st Respondent Company i.e. Pragnya Riverbridge Developers Limited. He has further submitted that he has filed an affidavit on 20.10.2016 before the Hon'ble High court by seeking permission to withdraw the said APPL 899 of 2015 on the ground that main CP No. 109 of 2012 along with other CAs pending were transferred to Hyderabad Bench of NCLT and it is functioning now. It is further stated that he has addressed a letter dated 23rd March, 2016 to the Judicial Registrar, High court by requesting to post the CC No. 1458 of 2015 at the earliest on the ground that the matter was directed to be posted earlier by Hon'ble Judge of the High Court.
6. The learned counsel for the petitioner further submit that the present Application and Contempt petition are meant for different objects/purpose and both are independent with each other. He has stated the present application was filed U/s 10E, 403 of Companies Act, 1956 R/w Regulation 44 of the Company Law Board Regulations, 1991 by seeking the Tribunal to direct the respondents to re-instate the 1st Applicant as Director of the 1st



Respondent Company in terms of interim order dated 2.12.13, but whereas CC No.1458 of 15 was filed before the Hon'ble High Court under Section 10 to 12 of Contempt of Courts Act, 1971 by seeking to hold the respondents were guilty of Contempt of the CLB order and to punish the contemnors for gross violation of the order dated 02.12.2013 passed by CLB, Chennai in CP No. 109 of 2012.

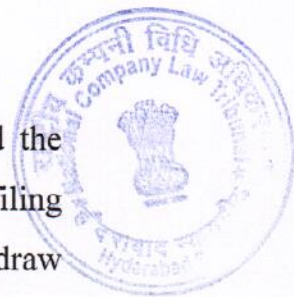
He has further submitted that the direction of CLB in its interim order dated 2.12.2013 has clearly mentioned that the first petitioner shall be continued until further orders even an adverse decision was taken by the Respondents to remove him. And the same is still in force and the respondents should be directed to continue him as Director until further orders as already directed by the CLB.

7. Shri S.Ravi, the learned Counsel for the Respondent No.1, 3 to 6 , while reiterating various contentions raised in his common counter statement dated 07.10.2015 filed in the case , has further contended as follows:
 - a. The present application was filed on a totally vexatious and unsustainable grounds and the relief sought in present application, was not sought in main Company Petition. The present application is filed deliberately misrepresenting vital and critical facts. And the applicants for the first time have indicated the terms of draft MOU that was circulated on behalf of Respondents, was not acceptable to them.
 - b. The learned Senior Counsel denied the allegation of Applicants that applicant was removed from the directorship and in fact, he was retired from the office of directorship at the Annual



General Meeting of the Company and he was not re-elected as Director. And contended that even though Applicant No.1 was removed from the office of directorship at the EGM held on 16.11.2013, he was continued in complete deference to the orders of this Hon'ble Board dated 02.12.2013, however, he was retired by rotation and not re-elected.

- c. As per the Companies Act, 2013, there is a specific procedure for removing a director and non-compliance of the procedure contained therein, would render the removal as invalid and a director retiring by rotation is an act of law and, it cannot be an act of oppression as alleged.
 - d. The learned Senior Counsel further contended that the present application was also belated one as the Shareholder meeting was held on 26.09.2014 and the applicants have not complained about removal of the 1st Applicant till the filing of present application in December, 2014 and, the same has been filed with an intention to stall the settlement attempts by filing frivolous and vexatious application. It is further contended that no steps has been taken by the company to unseat the Applicant No.1 as Director and he was retired in the normal course by operation of law. And contended that the respondents have not done any action, which violates the order of Hon'ble Board dated 02.12.2013.
8. The learned Senior counsel seriously opposed the about the maintainability of the present company application on the ground that the applicant has already filed CC No.1458 of 2015 for the alleged violation of the Interim Order dated 02.12.2013 passed by the CLB and the same is pending before the Hon'ble High Court. The learned Senior Counsel further submits that cause of action for



filing CC and present application is one and the same and the applicants cannot blow hot and cold at the same time. And filing an affidavit before the Hon'ble high Court seeking to withdraw only APPL899 of 2015 leaving CC No.1458 of 2015 does not mean that the case filed before the High Court was stands withdrawn. In any case, there is no violation of the Interim Orders in question as alleged by the applicants. Therefore, he sought for the dismissal of the present company application with exemplary costs.

9. In the light of above discussions of the case, the points for consideration in case are as follows:

- i. Whether the present company application is maintainable in the light of CC No.1458 of 2015 is still pending on the file of Hon'ble High Court,
- ii. Whether the Tribunal can pass directions as prayed for in the present application.

10. It is not in dispute that the CLB passed an interim order dated 02.12.2013 by interalia directing the Respondents of the CP to continue the 1st applicant/petitioner as Director until further orders. It is also not in dispute that this order was not varied/modified by any Court so far. However, when the applicant was not continued as Director, he has filed the present CA No. 1 of 2014 by seeking a direction to re-instate him as Director of the 1st Respondent Company. While the said CA was pending, the CLB passed an order dated 01.09.2015 by observing that the applicant/petitioner was not continuing as Director of the Company and held that the order dated 02.12.2013 was no longer in operation.

Aggrieved by said order dated 01.09.2015, the applicant/ petitioners have filed Company Appeal No. 10 of 2015 before the Hon'ble high Court of Judicature at Hyderabad. And the



Hon'ble High Court was pleased to dispose of appeal by an order dated 28.09.2015 by directing to dispose of the CA No. 1&2 of 2014 as stated supra.

So, the Tribunal is bound by the orders of the Hon'ble High Court to decide CA No. 1&2 of 2014. It is not in dispute that the Hon'ble High Court has not given any direction in CC No.1458 of 2015. Since, the CLB does not have contempt powers under Companies Act, 1956; the applicants have approached the Hon'ble High Court by filing contempt case as mentioned above. Though, the Companies Act, 2013 confers contempt power on NCLT, the issue arises under the old Act. Moreover, the relief asked by the applicants in the present application is only to comply with the orders of CLB dated 02.12.2013 by, reinstating the 1st applicant as Director. As stated by the learned counsel for the petitioners, that he is not pressing APPL No.899 of 2015 and he has also filed an affidavit to that extent for withdrawal of the same before the Hon'ble High Court.

11. The relief asked by the applicants in the present application is to implement the CLB's interim order dated 02.12.2013. It is a settled position of law that even an erroneous order passed by a court is binding on the parties until and unless such order is varied/modified by a competent Court of Law. Admittedly, there is no variation of the interim order in question so far and, the same is binding on the parties. The CLB's order dated 01.09.2015 is not an order passed in any application filed by the Respondents of the CP and, moreover, the Hon'ble High Court subsequently to above



order has directed to decide to the present CA. We cannot go into the question whether the 1st applicant is removed/retired/not re-appointed in accordance with law or not, in the present application. It is to be noted that the present application is filed by applicants/petitioners in the main CP and not by the respondents of the CP. So the only question to be considered in the present application is whether the interim order in question is complied with or not. Since, the CLBs order is very much clear that the 1st applicant should be continued until further orders. And the main CP is still pending disposal on the files of this Bench.

We are also of the considered view that the reason (s) for continuation of 1st applicant/petitioner as mentioned at the time of passing the interim orders in question, still holds good on equity ground that the applicants/petitioners were holding 26.4% of the paid up share capital of the Company prior to dilution of their shareholding and at least one director of the minority group should be on the Board of Directors till the disposal of the main Company Petition. And same is just and equitable in dispensation of justice.

12. In view of the above facts and circumstances of the case, it is just and proper to direct the Respondents to re-instate and continue the 1st applicant as Director of the first Respondent Company as per the interim order dated 02.12.2013. Accordingly, we allow CA No. 1 of 2014 in CP No.109 of 2012 by directing the respondents to reinstate and, continue the 1st Applicant/Petitioner as a Director of the First Respondent Company until further orders and, also direct

them to file necessary forms with Registrar of Companies. We also make it clear that above order is passed without prejudice to the rights of the parties in the main CP No.109 of 2012. No order as to cost.

Sd/-

RAVIKUMAR DURASAMY
MEMBER (TECH)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDL)

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**



V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68