NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

TP 24-A/2016 In TP No. 24/397-398/NCLT/AHM/2016 (New)
CA 149 of 2012 In C.P. No. 22/397-398/CLB/MB/2012(Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.11.2016

Name of the Company: Niklesh T. Nihalani
V/s.
Rohit Dyeing & Printing Mills Pvt. Ltd. & Ors.

Section of the Companies Act: Section 397-398 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	DHIREN R. DAVE	PCS	Petitioners	
2.				

ORDER

Learned PCS Mr. Dhiren Dave present for Applicant/original Petitioner.
None present for Respondents.

Order in TP 24-A/2016 is pronounced in open court.
Application 24-A/2016 is dismissed. No order as to costs in the Application,

Vide separate order attached.

List the main TP 24/2016 (CP 22/2012) on 23.12.2016.

17.11.16
(BIKKI RAVEENDRA BABU)
MEMBER JUDICIAL

Dated this the 17th day of November, 2016.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
PRESENT: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

TP 24-A/2016 (CA 149/2012)

In TP 24/397-398/NCLT/AHM/2016 (CP 22/397-398/CLB/MB/2012)

NikleshTirathdas Nihalani -Applicant/Original Petitioner

V/s.

1. Rohit Dyeing & Printing Mills Pvt. Ltd. & Ors.
2. Rohit Tulsi Nihalani
3. VRV Trading Co. Pvt. Ltd.
4. Singhvahini Tradelink Pvt. Ltd.
5. Rangmahal Suppliers Pvt. Ltd.
6. Kamyabi Commercial Pvt. Ltd.
7. Sonchiri Commercial Pvt. Ltd.
8. Nimmi Tulsidas Nihalani -Respondents/Original Respondents
9. Tulsi Nihalani -Respondent No. 9 (proposed party)

This Application having come up for Final hearing before this Tribunal on 15.11.2016 in the presence of Mr. Dhiren R. Dave, Learned PCS for Applicant/Original Petitioner, Mr. S.K. Jain, Learned PCS for Respondents No. 1,2,7 and 8 and Mr. K.H. Halai, Learned Advocate for proposed Respondent No.9, and having stood over for consideration till this date, this Tribunal pronounced the following Final Order on 17.11.2016

FINAL ORDER

1. Petitioners in TP 24/2016 filed this application to implead Mr. Tulsi Nihalani as Respondent no. 9 in TP 24/2016 and make amendments to the petition apart from other interim reliefs, viz., status quo regarding assets of company; not to hold any board meeting or general meeting; to stop misuse of company funds; bank account to be operated by both Directors; removal of petitioner as Director be kept in abeyance.

2. Applicant filed TP 24/2016 seeking reliefs to set aside allotment of 43,500 shares to Respondent No. 3 to Respondent no. 6 on 31.3.2010 and other

reliefs under sections 397 & 398 of Companies Act, 1956. The said company petition is coming up for final hearing. At this stage, this application is filed.

3. In the affidavit filed in support of the application, it is stated that the shares of Respondent No.1 Company were allotted to Respondents no. 3 to 6 and they are under challenge in the main company petition. It is also stated by the applicant that the shares allotted to Respondent No.3 to Respondent No.6 Companies were transferred to Respondent No.7 company. Respondent No.8 is the wife of proposed Respondent No.9. Respondent No.2 is the son of proposed Respondent No.9. It is said in the affidavit that Respondent No.8 is a Director in R7 Company.

4. Respondent No.7 whose shareholding is challenged convened requisition meeting of shareholders on 16.4.2012 and removed the Petitioner as Director and appointed proposed Respondent No.9 as director of Respondent No.1 Company. It is also contended by Learned PCS for Applicant that proposed Respondent no.9 is a party to the arbitration proceedings wherein the entire family dispute was sought to be settled including the dispute relating to first Respondent company.

5. Respondent No.1 and Respondent No.2 stated in the reply that Respondent No.9 was appointed as Additional Director on 16.4.2012 and resigned on 13.7.2012 and at present there are only two Directors in Respondent No.1 Company namely Mr Tulsidas Nihalani and Nimmi Tulsidas Nihalani. It is further stated in the reply that the proposed party is neither a Director nor a shareholder in Respondent No.1 Company.

6. Regarding the other reliefs prayed in the application, it is stated in the reply that those interim reliefs are not granted by the Hon'ble Member of the CLB vide its order dated 16.3.2012.

7. Respondents No. 7 and 8 in their reply stated that Respondent No.7 Company was incorporated on 5.1.2006 and it had bought shares in

Respondent No. 2 to 6 on 21.3.2010. It is stated that Respondent no. 7 company is an existing company and not a paper company. Respondent No.7 Company as a shareholder of Respondent No.1 Company convened requisition meeting under section 169(6)(a) of Companies Act, 1956 since Respondent No.1 Company had not proceeded with EOGM within 21 days of deposit of requisition that is, on or before 21.3.2012. The requisition was deposited with first Respondent Company for convening EOGM of shareholders under Section 169 of companies Act on 28.2.2012.

8. Respondent No.1 Company convened meeting of Board of Directors on 15.3.2012 for considering the requisitions of the requisitionists.

   In fact, EOGM was held on 16.4.2012 basing on the notice issued by the requisitionists under section 169 of the Companies Act. Petitioner did not attend the meeting on 16.4.2012.

9. Respondent No.9 in his reply stated that he was appointed as Director of Respondent No.1 Company in the EOGM held on 16.4.2012. Respondent No.9 further stated that he resigned as Director of the First respondent company w.e.f 13.7.2012 and his resignation was accepted by the Board of Directors.

10. Respondent No.9 further stated that he did not hold any equity shares in the first respondent company.

11. Learned Counsel appearing for Respondent No.9 contended that Respondent No.9 is neither necessary nor proper party to the Company Petition.

12. The points for consideration-

A. whether Respondent No.9 proposed party is a necessary or proper party for Company Petition no. TP 24/2016.

B. whether Petitioner is entitled for reliefs (B) to (E) prayed in the application.

13. Point A:-

In order to implead a party to a pending proceeding, this Tribunal has to see whether the presence of such party is necessary or proper for the adjudication of the controversies involved in the matter.

On the said proposition of law, Learned Counsel for proposed Respondent no. 9 cited a decision in *Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru* (1995) 3SCC147. In the above-said decision, the Hon'ble Supreme Court

made a distinction between a necessary party and a proper party. It is held by the Hon'ble Supreme Court that a Necessary party means, that there must be a right to some relief against such party in respect of the dispute involved in the suit and the presence of such party is necessary to enable the Court to effectively and completely to adjudicate upon and settle all the questions involved in the suit finally. It is further held by the Hon'ble Supreme Court that Proper party means without whose presence complete and final decision on the question involved in the suit cannot be taken. On the same proposition of law, there is another decision of the Hon'ble Supreme Court in *Ramesh Hiranand Kundanmal v. Municipal Corporation* (1992) 2SCC 524.

Keeping the said distinction made by the Hon'ble Supreme Court in the above-said decision, this Tribunal proceed to consider whether proposed Respondent no. 9 is a necessary or proper party.

As can be seen from the facts of the case, admittedly no relief is claimed against proposed Respondent no. 9 in the Company Petition. Therefore, he is not a necessary party.

There is no dispute about the fact that Petitioner was replaced as Director by Respondent no. 9 in the meeting held on 16.4.2012 and Respondent no. 9 resigned as Director on 13.7.2012. That means Respondent no. 9 was Director of the first respondent company only for a period of less than three months.

It is not the case of the Applicant that the company has passed any resolution during the period from 16.4.2012 to 13.7.2012 either in the meeting of Board of Directors or in the General Meeting which is taken up as a ground in support of the plea of Oppression or Mismanagement.

There is no dispute about the fact that Respondent no. 9 is or was not having any interest in the first Respondent company.

The contention of the Learned PCS for Applicant that Respondent no. 9 is a party to the Arbitration agreement is not at all pleaded in the affidavit filed in support of this application. Even otherwise it is not even the case of the Applicant that the arbitration has been acted upon.

Keeping the reliefs prayed in the company petition and the controversies involved do not require the presence of Respondent no. 9 as a party to the proceeding in the company petition.

The presence of Respondent no. 9 as a party to the proceedings is not at all required for considering and deciding controversies involved in the company petition, leave alone effectively or completely.

In view of the above discussion it is held that proposed Respondent no. 9 is neither a necessary nor proper party.

14.Point B:-

In an application filed to implead a third party as a Respondent, Applicant is not entitled to claim interim reliefs which could be considered only while hearing the main petition or in the interim application, if any filed. The interim reliefs (B) to (E) in an application to implead a party is a misconceived exercise. In fact, Applicant sought for all those interim reliefs in the main petition at the admission stage but the Learned Member of the CLB was of the view that was not the stage to grant interim reliefs. Thereafter, during the pendency of the company petition there was no mention about the interim reliefs. Therefore, in this application, Applicant is not entitled for the interim reliefs (B) to (E) that too when the main petition is at the stage of final hearing.

15.In the result, this application is dismissed as devoid of merits.

No order as to costs.

Typed by me and pronounced by me in open court on this the 17th day of November, 2016.

17.11.16

(BIKKI RAVEENDRA BABU)
MEMBER JUDICIAL