

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

IA 48/2016 in CP 20/2016

CORAM:

B.S.V. PRAKASH KUMAR
MEMBER (JUDICIAL)

V. NALLASENAPATHY
MEMBER (TECHNICAL)

In the matter of Companies Act, 2013 under Sections 241 to 244.

AND

Between:

1. M/s. Tanvi Construction Pvt. Ltd. & Ors.
2. H. G. Vijaykumar

... Applicants/ Respondents

Versus

Sangeeta Vijay Kumar

... Respondent/ Petitioner

Present on behalf of the parties:

1. Mr. Mayur Khandeparkar, Mr. Rahul D. Oak Advocates for the Petitioner.
2. Ms. Armin Wandrewala, Mr. Akshay Vani, Ms. Mansi Gandhi Advocates for R-1 & R-2.

ORDER

(Heard on 20.09.2016)

(Pronounced on 22.09.2016)

R1&2 filed this IA 48/2016 for appointment of a fit and proper person as an independent Chairman pending disposal of the company petition and for a direction to call AGM on or before 30-9-2016 under the supervision of an independent Chairman on the ground that the petitioner objected to passing of accounts on an allegation that inspection was not complete thereby she would not sign the profit and loss account, balance sheet and director's report. R2 says that the petitioner, his wife, herself signs all the cheques for she continued as MD until before filing this CP, thereby she could not have raised objection for approving accounts and for holding AGM to through statutory compliances. R2 further submits that the petitioner took inspection of the company records in detail. in spite of it, she has refused to sign P&L account, Balance sheet and

Directors report, the result of it is, ongoing projects of the company and servicing of the loans will get hampered. The company once could not pass accounts; the company fails to make statutory compliance and let exposed to penalties. For there being only two directors in the company, i.e. the petitioner and second respondent and there being no cooperation from the petitioner, it has created dead lock in the company leading to derailment in the functioning of the company. For these reasons, first and second respondent prays this Bench to appoint a Chairman to get rid of deadlock situation in the company and to call AGM to be held on 30-9-2016 as mandated by the Statute.

To which the petitioner submits that this application is not maintainable as the same is not in the aid of final relief, apart from this, the petitioner submits that since last AGM was held on 30-9-2015, it could be held on any day within 15 months from the date of last AGM, thereby it can't be said if AGM is not held on 30.09.2016, it would become violation of mandate under the statute.

It is further submitted that no Board resolution has been conveyed and financial statements have not been approved as mandated under section 134 of the Companies Act 2013 thereby unless a Board resolution has been preceded holding AGM, no AGM could be held without approval of financial statements of the company. The petitioner further says, for having complete inspection not being given to the petitioner, the petitioner will be handicapped for approving the accounts of the company. Since this company is constituted with two partners i.e. the petitioner and second respondent, an approval cannot be given unless the accounts of the company are fully furnished to the petitioner for which the petitioner has asked cheque books of the company, accounts of the company, property details of R1 company, details of the banking transactions in Axis bank, TJSB and Karnataka bank. Likewise details of short term and long term borrowings and also investments in FDs.

On these pleadings, R2 counsel submits that the petitioner is none other than the wife of R2, and she has been actively participating in the affairs of the company since incorporation, in fact, she continued as Managing Director of the

therefore, it cannot be said today that the petitioner is not in know of the affairs of the company, it is indeed a ploy to derail the functioning of the company so that the company will sink, with this, R2 will also get sunk. The petitioner is continuing as cheque signing authority and most of the cheques of the company were being signed by the petitioner herself. She was coming to the office up to 1-6-2016. The counsel submits that R2, despite the petitioner is in know of each and every transaction happening in the company, he is ready and willing to provide copies of the documents sought by the petitioners since 1.4.2015 till date.

The counsel also says that petitioner, who now opposing the relief of appointment of Chairman, herself asked this relief in this company petition.

R2 counsel says that if at all the existing stalemate continues in the company, it being a Real Estate company, it will not be in a position to ensure the construction keep happening, many transactions that happen on day to day basis and servicing debt will come to halt, to avert this impending doom, an independent man is required to hold the meetings and pass resolutions and overseeing the functioning of the company to protect the interest of all stake holders, such as shareholders, purchasers of flats, suppliers, employees and bankers. It being already evident that this petitioner has not been allowing to pass any resolution as illustrated in the IA, it will not even possible to hold AGM. It goes without saying non holding AGM not only attracts penal provisions but also causes impediment to the functioning of the company.

Notwithstanding the merits of the case, second respondent submits that he will again provide inspection if required, and also supply documents since 01-04-2015 till date, and he will remain open to provide all documents to an independent authority to see the business of the company does not come to halt. He says he has 2/3rd shareholding in the company, the petitioner has only 1/3rd shareholding, but whereas R2 ignoring his majority, he continued the Board with the petitioner and himself as directors.

The petitioner counsel vehemently argued that 21 days' notice is required for holding AGM and a board resolution shall be preceded holding AGM for

there being no board resolution, no order could be passed calling AGM basing on the relief sought by the respondents. He also argues that unless documents sought by the petitioner are given, the accounts of the company shall not be approved.

It is not the case of the petitioner that this petitioner is an innocent lady not knowing the affairs of the company and mutely signing on which ever document placed by her husband. On reading the company petition, it is evident that the petitioner has always remained proactive in relation to affairs of the company hence it cannot be said that the petitioner could not approve the accounts unless the accounts of the company are given to her since beginning. It is not even the case of the petitioner that her husband unilaterally acting for unlawful gain to himself. There is no serious and specific allegation attributing R2 indulging in doing fraud except making sweeping allegations without any details as to what fraud R2 did, in fact, she wants to dig out something by taking inspection and documents. It is a known proposition that parties shall not be permitted to obtain evidence and then to make out case after petition has been filed. Yes, one thing is true that dead lock situation is present in the company, to avoid that situation only, Chairman appointment is sought by the respondent, this relief is even asked by the petitioner as well in her CP.

However, for having second respondent himself is ready to provide accounts, R1 property details, Bank statements reflecting borrowings and investments since 1-4-2015 till the date, this Bench accordingly directs R2 to supply the details aforementioned since 1-4-2015 till date within one week hereafter.

It is an established proposition of law that this Tribunal can pass any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable thereby the petitioner counsel could not have advanced an argument saying that AGM should not be held without 21 days' notice. If at all the management holds meeting short of 21 days' notice, it can be violation, here no such meeting was

shareholders and the same are continuing as directors. The basic object of all these time based notices are to ensure no body is left informed before holding meeting and in relation to the business takes place in the said meeting. However, this Bench is not giving any directions in respect to this issue, hoping the same could be decided in the Board meeting in the presence of Chairman.

Since the petitioner herself sought a prayer for appointment of an independent person as a Chairman, the counsel could not have argued or the petitioner could not have made an averment in the reply to the application contrary to the relief sought in the main company petition. No party is expected to raise objections de hors reasons.

It is an admitted fact that there are only two Directors and as to appointment of R3 as Director, it is not being pressed upon by R2, it is quite obvious it is unlikely that the petitioner and R2 come to consensus for carrying this business, and it being difficult for the parties to approach court of law as and when they could not come to consensus, this Bench, in the interest of the company, is of the opinion that an independent person having capacity to take decisions in relation to affairs of the company is immediately required to preside as Chairman to this two member Board, or else, the functioning of the company will come to a halt which will lead to far reaching implications.

In view of the same, this Bench hereby appoints Retired Judge of Honourable Supreme Court, Shri H L. Gokhale Mobile number: 9769305849 as independent Chairman with a casting vote as and when the petitioner and R2 could not arrive to a consensus on any of the issues in agenda items of the meetings and with a power to hold Board meetings and General meetings, including AGM and also to oversee the business the company.

As to remuneration to the Honourable Chairman, the company is directed to pay the remuneration of ₹1.50lacs on monthly basis for a period of six months or until this dispute is resolved, whichever is earlier.

In order to assist the Chairman and also to audit the accounts of the company for the year 2015-2016, a Chartered Accountant namely Shri Jayesh B

Kapani (Partner Shankar & Kapani, NTC House, 2nd Floor, N M Marg, Ballard Estate, Mumbai-400038, phone numbers: 61589700, Mob: 9820158516, Email: jayesh.kapani@shankerkapani.in) is hereby appointed with a monthly remuneration of ₹75,0000 payable by the company for a period of six months or until this dispute is resolved, whichever is earlier. As to audit of the company for the year of 2015-2016, the company shall pay remuneration to the auditor independent of the monthly remuneration as agreeable to the Chartered Accountant.

Accordingly, IA 48/2016 is disposed of.

sd/-

B.S.V. PRAKASH KUMAR

Member (Judicial)

sd/-

V. NALLASENAPATHY

Member (Technical)