

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD

CP No.11/241/59/HDB/2016

Date of Order: 31.10.2016

Between:

Mr. Palakala Shyam Sunder Reddy
S/o: Sambashiva Reddy Palakala
Occupation: Business, Aged: 39 Years,
Capacity: Director and Shareholder
DIN: 03300188
Address: H.No. 1-4-14, Chinna Nivas, Street No.7,
Habsiguda, Hyderabad-500007.



....Petitioner

Versus

1. M/s. VIND AGRO FARMS PRIVATE LIMITED
CIN: U01119TG011PTC073871
Capacity: Private Limited Company.
REGD Office: 1631 H/368/G1, 6th Phase, KPHB
Colony, Hyderabad TG 500072
2. Mr. Ravindra Babu Yarlagadda
S/o: Siva Rama Krishna Prasad Yarlagadda
Occupation: Business, Aged: 49 Years
Capacity: Director and Shareholder
DIN: (03510994)
Address: 368, 6th Phase,
KPHB, Kukatpally,
Hyderabad TG 500072
3. Mrs. Yarlagada Snehalatha
W/o. Ravindra Babu Yarlagadda
Occupation: Business, Aged: 42 Years
Capacity: Director and Shareholder
DIN: (03300286)
Address: 368, 6th Phase,
KPHB, Kukatpally,
Hyderabad TG 500072

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OF THE ORIGINAL

....Respondents

Counsel for the Petitioner:

Shri V. Venkat Rami Reddy

Counsel for Respondents:

Shri Naresh Kumar Sangam

CORAM;

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

Hon'ble Mr. Ravikumar Duraisamy, Member (T)



ORDER


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

1. Shri Palakala Shyam Sunder Reddy, the petitioner herein, by holding 21 lakhs equity shares representing 33.87% of M/s VIND Farms Agro Private Limited (Respondent No.1 here in) has filed the Present CP No.11 of 2016, under section 241 and 59 r/w 242, 244 and other applicable provisions of the Companies Act 2013, (referred to as Act herein after), by alleging several oppressive acts and mismanagement on the part of respondents and thus sought to declare: that the Board meeting dated 06.10.2016 as illegal; to declare the proposed EGM dated 02.11.2016 as illegal; to appoint an independent statutory auditor to finalise the pending accounts etc.
2. The petitioner also filed a separate application by interalia seeking to grant stay and restrain the respondents from conducting the proposed EGM to be held on 02.11.2016; to restrain the respondents from appointing any person in the Board of Directors and not to change the constitution of the board of the Company; to restrain the respondents for the proposed removal of the petitioner as Director of the Company etc.

3. Heard Shri V. Venkat Rami Reddy for the petitioner and, Shri Naresh Kumar Sangam for all the respondents and, perused all the materials filed in support of the petition.
4. The learned counsel for the petitioner submits that the Respondent No.2 and 3, who are husband and wife respectively have started making so many false allegations against the petitioner and, they are misusing the company funds by starting mining activity contrary to the objects of the Company and are also not maintaining day to day books of accounts properly and, even not finalised the accounts for the financial years 2014-15 and 2015-16. The petitioner has also lodged a complaint against 2nd Respondent with SHO, Narayanguda, Hyderabad with regard to the theft of records and share certificates and the same is pending. He also submitted that when the petitioners' life was under threat by the actions of the Respondents, he filed a criminal complaint dated 13.10.2016, CF No.7398 of 2016 before the IVth Additional Chief Metropolitan Magistrate at Vijayawada complaining the acts of 2nd and 3rd Respondents and the matter was referred to the Police authority for investigation and, it was directed to submit report on or before 01.11.2016. The petitioner also filed a civil suit bearing OS No 876 of 2016 before the IIIrd Additional District Judge of LB Nagar, Hyderabad, seeking an injunction restraining the respondents from holding the meeting on 24.08.2016 with an agenda for his removal and the same is also pending.
5. The learned counsel for the petitioner further submits that the petitioner filed a complaint on 20.08.2016 to the Registrar of Companies to mark the Company having a management dispute and the matter is yet to be decided by RoC. He further submits that the petitioner addressed a letter 15.09.2016, in pursuant to the notice of EGM, to the Directors of the Company by interalia pointing out as per Section 175(1) of the Companies Act, 2013, the


chairman of the Board is bound to put resolutions to be decided at the Board meeting, if one third of the total number of Directors insist that the resolution under circulation must be decided at a duly convened meeting. As the petitioner is one of the Directors of the Company constituting one third of the total strength of the Board, he has asked to follow the above provision.

The learned counsel further submits that he has submitted his resignation letter 02/30.3.2016 for the post of Managing Director and requested to change his designation as Director. In pursuant to the above letter, a special notice under section 169 r/w 115 of the Companies Act, 2013 was issued, proposing to remove him as Director.

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6. In the above circumstances, the learned counsel for the petitioner urges the Tribunal to intervene in the matter and, protect the interests of the petitioner by passing an appropriate interim order.
 7. Shri Naresh Kumar Sangam, who takes notice for the respondents, has opposed both the main petition itself and interim relief, on the ground that the petition was filed on false statements and came with unclean hands. He also submitted a written arguments dated 31.10.2016 on behalf of Respondent No.2. He has dealt with all the allegations made in the petition.
 8. The learned counsel for the Respondents further submits that the petitioner was appointed as Managing Director of the Company on 26.04.2011. As he was involved in siphoning of funds and forging of balance sheets for the financial Years 2012-13 and 2013-14, he was requested by the respondents to revive those financial statements reflecting true and fair transactions. However, the petitioner, instead of taking necessary action for the above financial years, has opted to resign as Managing Director to

wriggle out from his responsibility and continued as a Director since 06.10.2016.

He further submits that as per Section 169 of the Companies Act, 2013, shareholders of a company have a right to remove a Director and the petitioner cannot question such democratic rights by questioning the EGM Meeting in question. He further relies upon judgment of the Apex Court in Life Insurance Corporation of India V/s Escorts Ltd and Ors. (AIR 1986 SC 1370). He has drawn our attention to paragraph 97 of the above judgment. In the end of this paragraph, the Apex Court is held as follows:



“As already noticed, the only effective way the members in general meeting can exercise their control over the directorate in a democratic manner is to alter the articles so as to restrict the powers of the directors for the future or to dismiss the Directorate and appoint others in their place. The holder of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a director and appoint director”

He therefore, submits that the petitioner is not entitled for any interim relief.

9. It is not in dispute that the petitioner is holding 33.87% of the shareholding of the Company, whereas Respondent No. 2 and 3 are holding 54.6 %, 11.45% respectively. Though the Respondent No.2 and 3 together holding more than 66%, at the same time, the respondents cannot act arbitrarily, violating the principles of natural justice affecting the interests of minority shareholders. Though the respondent No.2 has filed a written argument denying all the allegations and contentions made by the petitioner, those

cannot be examined at interlocutory stage. It is not in dispute that the petitioner is still continuing as a Director/Managing Director and now sought to be removed in proposed EGM to be held on 02.11.2016.

10. The petitioner has approached police authorities, civil and criminal courts and Registrar of Companies as mentioned above, by pointing out several acts of the respondents and sought remedy of those issues. Since the issue and the reliefs sought falls within jurisdiction of NCLT, it is just and proper to direct the respondents to continue the petitioner as Director till the next date of hearing with a liberty to the respondents to convene EGM as proposed on 02.11.2016.

11. In the above facts and circumstances of the case and, in order to meet the principles of natural justice, we direct the respondents to

continue the petitioner as Director of the Respondent No.1 Company until further orders. And the respondents are at liberty to conduct the proposed EGM on 02.11.2016 strictly in accordance with the relevant provisions and especially with regard to the Section 169 of the Companies Act 2013. Even the resolution is passed in the proposed EGM to remove the petitioner from the Directorship of the first Respondent Company, it should not be given effect to until further orders to be passed by this Tribunal.

12. Admit and issue notice to all the respondents. Post the case on 08.11.2016 for hearing.

Sd/-

Sd/-

RAVIKUMAR DURASAMY
MEMBER (TECH)

RAJESWARA RAO VITTANALA
MEMBER (JUDL)

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