

National Company Law Tribunal  
Allahabad Bench  
Allahabad

CP No. 77/241-242/ALD/2016



ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.09.2016.

NAME OF THE COMPANY: Sh. Gurlpal Singh

Vs.

M/s Simbhaoli Sugars Ltd.

SECTION OF THE COMPANIES ACT: u/s 241/242 of Companies Act, 2013.

Sl. No.	Name	Designation	Representation	Signature
1.	Mr. Chetan Sharma	Sr. Adv	for Petitioner	
2.	Jeevesh Negral	Adv.	for Petitioner	
3.	Mr. Sameesh Kalia	Adv	"	Harshil Ag
4.	Mr. Harshil Agarwal			

**Order dated 23.09.2016**

**CP No. 77(ND)/2016 Shri Gurlpal Singh Vs. M/s Simbhaoli**

**Sugars Ltd.**

We have heard the Learned Senior Counsel Shri Chetan Sharma for the petitioner and Learned Senior Counsel Shri Navin Sinha for the respondents. The Company Petition is filed under Sections 241 & 242 of the Companies Act, 2013 complaining certain acts of oppression and mismanagement of the public Ltd. Company alleged to have been committed by the respondents. As an interim measure the petitioners seek to direct the respondents not to convene Annual General Meeting of the company scheduled on 26.09.2016 and put to vote the resolution; or in the alternative, to restrain respondents from considering resolutions No. 2 and 12 during the pendency of the petition; or in the alternative, to restrain the respondents from giving effect to the resolutions No. 2 and 12 if passed in the AGM during pendency of the petition.

Even though certain other interim measures are also prayed for the Learned Counsel did not address arguments on those measures.

Even though both the counsels have addressed on the merits of the case by taking us through the pleadings *in extenso* and relied upon judgements to substantiate their contentions, we prefer to confine ourselves to the short question whether an interim order or direction can be issued in relation to resolutions 2 and 12 mentioned in the agenda for the Fifth Annual General Meeting of the company as appearing in the notice available at page 494 of the petitioner's paper book.

The genesis of the dispute is like this. Admittedly the first respondent company is a public Ltd Company and the promoters including petitioners and the respondents are having around 48% of the shareholding out of 1/3 is held by the petitioner family and it is almost a quasi-partnership; and public and financial institutions were holding around 50% of the shares. For the past 30 years, admittedly the petitioner No. 1 has been the director and for several years he has been the Managing Director of the company. It is also not disputed and it is on record that the petitioner and his family members have provided personal guarantee to an extent of 500 crores to banking institutions.

A notice in deviation to the agenda approved by the Board as per the stand taken by the petitioners was issued for holding the AGM on 26.9.2016. In fact, the board meeting was first scheduled to be held on 30.05.2016. As per Annexure-P-12 item No. 9 thereof is not expressly showing about the appointment of directors who are retiring by rotation. However, item No.9 of the agenda contained at page 379 shows "to consider the names of directors retiring by rotation whose term of appointment shall be determined under the provisions of Section 152 of the Act" is the agenda. Further, in the notice served for the board meeting scheduled on 12.08.2016, item No. 11 is relating "to consider and approve the retirement of directors by rotation at the ensuing Annual General Meeting." The draft resolution proposed for the meeting originally scheduled on 17.09.2016 but now scheduled to be held on 26.09.2016 is showing as agenda item No. 12 as below:

“On completion of term under the provisions of Section 152 of the Companies Act, 2013 Mr. Gurpal Singh is retiring by rotation.”

The notice at page 494 is containing in its ordinary business part as item 2 the following draft resolution:

“Resolved that, pursuant to the applicable provisions of the Companies Act, 2013 and Rules made there under, including any statutory modification (s) or re-enactment (s) thereof for the time being in force ,the vacancy caused by the retirement of Mr. Gurpal Singh (DIN-00064807) who hereby retires by rotation, not be filled up for the time being.”

The contention of the petitioners is that the above draft resolution is never approved by the board and if this draft resolution is put to voting and is passed, the petitioners who are promoters and who have given personal guarantee to extent of 500 crores will be out of the company management which would amount to oppression. Similarly item No. 12 of the notice contains a draft special resolution relating to change of shareholding pattern as part of Corporate Debt Restructuring process.

Shri Navin Sinha Learned Senior Counsel for the respondent has resisted the prayer for interim relief mainly on the ground that the company petition did not disclose necessary grounds and particulars of oppression and mismanagement and therefore the interim relief cannot be granted. He has also submitted that from the evening of 22.09.2016 the e-voting was commenced and therefore any interim order or direction cannot be granted at this stage.

We have considered both the pleas. The respondents have to file the counter. In the absence of a counter and all the material documents relating to the contentions put forth by both sides, we will not be in a position to express any view appropriate for disposal of the matter.

The fact remains is that the petitioner No. 1 is presently Managing Director and has been in the management of the company for the last 30 years. There are documents showing that he is actively managing the company in that capacity. Further the board has never approved the proposed draft resolution No. 2 to be placed for voting in the AGM. The draft resolution No.2 seems to be not in accordance with Section 153 Sub-section 6 (e) and Sub-section 7 (a) of the Companies Act, 2013. A conjoint reading of the above provisions show that director who is retiring by rotation is entitled to be re-appointed unless an express decision to the contrary is adopted at the AGM. The proposed resolution No. 2 is not a positive express resolution as envisaged by Sub-section 7 (a) of Section 152 of the Act.

Therefore, we find that prima facie there appears a case in favour of petitioner and if on the basis of a resolution which was not approved by the board the petitioner is thrown out of the management, he would sustain serious loss besides it being prejudicial to the interests of shareholders of the company. In as much as the voting is already commenced, by way of interim direction we direct that any resolution adopted on items 2 and 12 of the notice shall not be given effect to till further orders by this Bench. The respondents shall file their counter and documents in two weeks. Matter is ordered to be listed on 25.10.2016 for rejoinder and completion of pleadings.

List the matter on 25.10.2016.

  
SH. VSR AVADHANI (Judicial Member)

  
SH. H.P. CHATURVEDI (Judicial Member)

Dated 23.09.2016