

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No.73/(MAH)/2016
CA No. 35/2016

CORAM:

Present: SHRI M. K. SHRAWAT
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 29.08.2016

NAME OF THE PARTIES: Mr. Sushil Dhurchand Bothra

V/s.
M/s. Arham Anmol Projects Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 397/398, 235 of the Companies Act
1956 and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
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1	Mr P.N. Modi	Senior Advocate	
2	Mr. Vinay Chankam	Advocate.	
3.	Mr Naville Tashkare	Advocate	
4.	Mr. K.C. Jacob	Advocate	

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for Petitioners/ Applicant.

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CP 73/397-398,235/CLB/MAH/2016

RESERVED ON 29/08/2016

PRONOUNCED ON 16/09/2016

1. Ld Advocate for petitioner is present and referred I A No.35/2016 (Supra).
The Applicant is also the Petitioner in CP 73/2016. This application has been filed on 24/08/2016 in NCLT.

2. Few issues have been raised as listed in the application; with the reference to an Order (interim) dated 02/08/2016, wherein the directions were as under- *MKS*

"5. Having heard both sides at some length on the issue of operation we deem it justifiable to pass an interim order as here under: -

(a) Pending final disposal of CA 19/2016 the Respondents no. 2 & 3 shall not hold the meeting of Board of Directors without due service of notice to the Petitioner directly and also through his appointed Advocate.

(b) Pending final disposal of CA No. 19/2016 the status quo as on date in respect of shareholding pattern of the company shall be maintained.

(c) Pending final disposal of CA 19/2016 the Respondents No.2 & 3 are hereby restrained not to appoint New Director as an additional Director.

6. Respondent no.3 today represented by the Ld Advocate who has given an undertaking to file the reply latest by 09/08/2016 in respect of CA & CP.

3. Submission of the Ld Senior Advocate is that in the absence of prescribed procedure of convening a meeting convened on 10/08/2016, the same should be *be MKS* held as null and void. Therefore, the Respondent(s) should be restrained to act upon and implement the resolutions passed on 10/08/2016. Further Ld Advocate has pleaded that EGM going to be held on 10/09/2016 should be *MKS*

stopped and in the alternate an observer may be appointed so that the meeting shall be held independently and also amicably.

4. I have examined the facts of the case in the light of the compilation of this application as well as to the petition filed. My pointwise decision is as under:-

- a. The board meeting held on 10.08.2016 cannot be held as null and void considering the totality of the facts, circumstances and the evidences placed on records. As far as the questioning of proper notice of meeting is concerned, evidences are on record that it was conveyed to Mr. Sushil Bothra (Applicant/Petitioner) because he has raised certain points/objections vide a letter dated 06.08.2016 addressed to Mr. Sumit Jain, authorized signatory. Therefore, it is unjustifiable to say that the said meeting was without due information to Mr. Bothra.
- b. It is also found that the most of the Agenda was to regularise the statutory compliances such as finalisation of accounts of the past 2 years also filling up a 'casual vacancy', appointment of an Advocate to represent the company, to consider the alteration of Articles of Association so as to adopt the new Companies Act 2013, resolution to convene EGM on 10/09/2016. Up to this extent, ex facie, no personal prejudice shall be caused to the applicant. A serious objection has been raised about the removal of Mr. Dhiraj Bothra stated to be CEO of the company. It is informed that an investigation is going on due to FIR filed, therefore, more appropriate is to take any decision only after the allegation is established. Under the totality of circumstances, the ex-facie the purpose of the said meeting was to carry on the day to day today business of the company, hence legally not in the welfare of the company to interfere at this stage.
- c. On the question of appointment of an independent observer, the expectation of the bench is that the Directors with the team of professional consisting CS/CA/Advocates are wise enough to convene the meeting and conduct the affairs of the company in an amicable atmosphere diligently. At this juncture no interference is needed.

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5. In the interregnum a mention was made on 09/09/2016 to restrain the EGM to be convened on 10/09/2016. An order (interim) has been pronounced that very day, now to be read with this interim order. Rather in the interest of justice, the orders of CLB/NCLT pronounced in the recent past particularly dated 26/05/2016, 02/08/2016, 24/08/2016 and 09/09/2016 are not be read in isolation for any reference or adjudication.
6. There shall be no change in the dates pronounced earlier. As per the record the next date of hearing, as already communicated, is 23/09/2016.

sd/-

16/09/2016
Dated: 29.08.2016
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(Shri M.K. Shrawat)
Member (Judicial)