

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

IA No.125/2017 IN

T.P. No.71/ 2016 IN CP 79/2015

UNDER SECTION 242(4) of CA, 2013 R/W RULE 11 NCLT RULES,2016

IN THE MATTER OF S. JAYAVIKRAM & 3 OTHERS

Vs.

SORAKE CHANDRA SHEKAR HOSPITALS PVT. LTD. & OTHERS

Coram: Hon'ble Shri.Ratakonda Murali, Member Judicial.

Hon'ble Dr Ashok Kumar Mishra, Member Technical.

Order delivered on 20th September, 2017

For Applicant in the I.A : Shri S. Rajashekar, Advocate.

For the Respondents M/s. J. Sagar Associates, Advocates

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

ORDER

This Interlocutory Application is filed on behalf of the applications under Section 242
(4) of Companies Act, 2013, read with Rule 11 of NCLT Rules with the following prayers:

1. To restrain the respondents from holding the Annual General Meeting proposed to be held on 22/09/2017;
2. To freeze the voting rights on the 21000 equity shares illegally allotted in the Board meeting held on 09/01/2014 in favour of Respondent No.2 till the disposal of the main petition;
3. To restrain the respondents from declaring the dividend on 21000 equity shares illegally allotted in the Board Meeting held on 09/01/2014 in favour of Respondent No.2 till the disposal of the main petition;
4. To restrain the Respondent No.2 from exercising the casting vote as Chairman till the disposal of the main petition; and
5. To declare that the restriction that a member can appoint another member only as proxy as null and void and consequently permit any person to attend as proxy of any member and vote on the poll thereon.

Several allegations are made in the application in support of the reliefs sought for. The applicants have also filed several documents along with the application. Respondents No.1 to 6 have filed their objections. They have also filed certain documents as annexures to the counter.

When this matter was listed for hearing, the counsel appearing for the applicants confined his arguments in respect of reliefs No.3 and 5 stated above. In other words, the counsel has not pressed for any order on reliefs No.1,2 and 4 of the Interlocutory application.

The contention of the learned counsel for the applicants is that this Tribunal had passed an interim order in I.A. No.07/2016 dated 23.09.2016 in respect of similar reliefs sought for as in the case of relief No.3 in the present application.

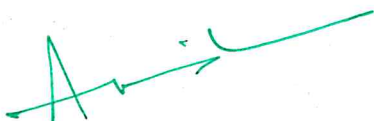
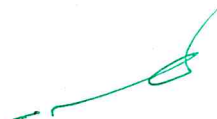
The contention of the learned counsel for applicants is that the Respondent Company has issued a notice dated 31.08.2017 proposing to convene the AGM to be held on 22/09/2017 at 10.00 am for transacting the following business:

1. To receive, consider and adopt the Balance Sheet as on 31.03.2017 and the Statement of Profit and Loss for the year ended on that date and the Reports of the Board of Directors and Auditors thereon.
2. To declare a dividend of Rs.30/- per equity share for the financial year ended March 31, 2017.
3. To appoint auditors of the company for the ensuing year and fix their remuneration and to pass the following resolution

... .."

The contention of the learned counsel for applicants is that an interim order is required to be passed by the Tribunal in respect of item No.2 of the agenda of the AGM similar to the order passed by this Tribunal dated 23.09.2016.

The contention of the learned counsel for applicants is that on an earlier occasion, when the Respondent Company proposed to declare dividend, the applicants had approached the Tribunal and obtained an order that the dividend proposed to be declared on the disputed 21000 equity shares standing in the name of Respondent No.2 be ordered to be kept in a separate account until further orders. The learned counsel for the applicants submits that the applicants want a similar relief to be passed in respect of item No.2 of the agenda of the AGM proposed to be held on 22/09/2017 where the Respondent Company has proposed to declare dividend of Rs.30/- per equity share. The contention of the learned counsel for the applicants is that if dividend is declared, the dividend payable on the disputed 21000 equity shares of

Respondent No.2 be kept in a separate account without disbursing the same to Respondent No.2 pending disposal of the main Company Petition.

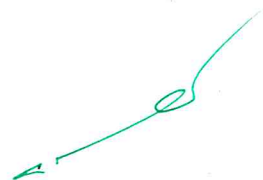

The learned counsel appearing for Respondents No.1 to 6 would contend that the dividend if declared by the Respondent Company in the AGM on 22/09/2017, the dividend payable to the disputed 21000 equity shares of Respondent No.2 may be ordered to be kept in a separate account and the same may not be disbursed to Respondent No.2 pending disposal of the main petition or until further orders and that the Respondents No.1 to 6 accept for passing of such an order as this Tribunal had earlier passed a similar order in IA 07/2016 dated 23.09.2016. The counsels are in agreement that the Tribunal may pass an order that the dividend payable on the disputed 21000 equity shares of Respondent No.2 be kept in separate account until further orders.

We have seen the order of this Tribunal dated 23.09.2017 filed by the applicants. It is true that this Tribunal in the said order had directed the dividend payable on the disputed 21000 equity shares of Respondent No.2 be kept in separate account until further orders. The order further goes to say that the Respondents are permitted to convene the AGM, but, the dividend if declared and payable to Respondent No.2 over the disputed 21000 equity shares be ordered to be kept in separate account without disbursing to Respondent No.2.

Therefore, AGM proposed to be held on 22/09/2017 be proceeded with. However, the Respondent Company is directed that if any dividend is declared in pursuance of item No.2 of the agenda, then the dividend payable on the disputed 21000 equity shares of Respondent No.2 be kept in separate account until further orders.

The next contention of the learned counsel for applicants that Annexure-'A' notice of AGM provides in clause 1 of the note as follows:

"A member entitled to attend and vote at the meeting is entitled to appoint a proxy and vote instead of himself and the proxy must be a member of the Company."



The learned counsel contends that this condition in the notice for convening the AGM is not in accordance with Articles of Association of the Company. Any person can appear as a proxy on behalf of a member if he is validly authorised and the proxy shall not necessarily be a member of the Company. The learned counsel for the respondents has also informed the Tribunal that any person can appear as a proxy for the member to participate in the AGM and the proxy shall not necessarily be a member of the Company. Therefore, we direct that the proxy shall not necessarily be a member of the Company and any one duly authorised by a member can be a proxy. So, the respondents to permit any person as proxy of the member in the AGM and the proxy need not be a member.

This application is thus disposed of partly granting the following reliefs

1. The Respondent Company may proceed with conducting the AGM as per the notice.
2. To allow any person to be a proxy of the member to participate in the AGM if the proxy is duly authorised by the member and the proxy need not be a member.
3. In case dividend is ordered to be disbursed in the AGM, the dividend payable on the disputed 21000 equity shares of Respondent No.2 be kept in a separate account and the dividend shall not be disbursed to Respondent No.2 until further orders.

The other reliefs prayed in the Interlocutory Application are not granted.


(ASHOK KUMAR MISHRA)
MEMBER (TECHNICAL)


20/9/17
(RATAKONDA MURALI)
MEMBER (JUDICIAL)

psp.