

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

CP 10/2008  
TP No.11/2016

UNDER SECTION 244 OF COMPANIES ACT, 2013

IN THE MATTER OF S.N. HARISH & ANR.

Vs.

M/S PODS BIOTECH PRIVATE LIMITED & 3 ORS.

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

Hon'ble Dr Ashok Kumar Mishra, Member Technical.

Order delivered on 27<sup>th</sup> September, 2017

For the Respondent No.1: 1. Shri R. Pallava, Advocate.

2. M/s. Malnad Law Associates.

ORDER

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

During the pendency of the proceedings Shri Mohammed Ali Azgar, Advocate of M/s. Malnad Law Associates, has filed vakalat for Respondent No.1 Company. At the same time, Shri Pallava R., Advocate, has also filed vakalat for Respondent No.1 Company. These two Advocates claim that they are authorised to file vakalat for Respondent No.1 Company. It is therefore, necessary for the Tribunal to decide as to who, among the two Advocates can represent the Respondent No.1 Company. Two Advocates cannot file separate vakalats for the Respondent No.1 Company.

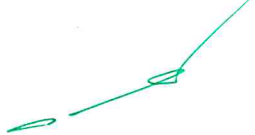

In this connection, we have heard both the counsels who contended that they are authorised by the concerned to represent the Respondent No.1 Company. In this connection, objections are filed questioning the vakalat filed by M/s. Malnad Law Associates for Respondent No.1 Company, as if objections are raised by Respondent No.1 Company. This objections are purported to have been filed on behalf of Respondent No.1 Company by Shri Pallava R, Advocate who filed the vakalat for Respondent No.1 Company.

Another counsel of M/s. Malnad Law Associates has also filed written arguments claiming to be filed on behalf of Respondent No.1 Company as if he is the authorised person to represent Respondent No.1 Company.

It is the case of Shri R. Pallava, Advocate, that Respondent No.2 in the Company Petition was inducted into the Company by the petitioners who are the founders of the Respondent No.1 Company. It is contended that Respondent No.2 has committed acts of mismanagement and oppression in respect of the affairs of the Respondent No.1 Company. Therefore, the petitioners have filed CP No.10/2008 before the Company Law Board, for various reliefs. It is contended that the CLB had passed some directions dated 11.01.2012. It is contended, that Respondent No.2, has intentionally failed to cooperate with the Chartered Accounts appointed in pursuance of the direction of CLB to quantify the investment made by Respondent No.2 in the Respondent No.1 Company. The Chartered Accountants got themselves relieved from the work for non-cooperation. However, the charge created over the property of petitioners situated at Nelamangala continued to exist. In the meantime, Respondent No.2 started filing civil suits. It is further contended that Respondents No.2 to 4 have resigned as Directors. It is contended that subsequently, the petitioners moved the CLB for review of the order dated 11.01.2012. The CLB declined to entertain the application.

It is contended that thereafter, the petitioners moved the Hon'ble High Court of Karnataka by filing W.P. No.17367/2015, seeking direction to CLB to pass appropriate orders in CP No.10/2008 and the Hon'ble High Court gave directions to the CLB to pass orders on an application filed by the petitioners in this behalf.

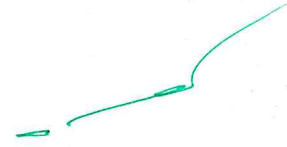

The contention of Shri Pallava R. that Shri Praveen, who is said to have authorised M/s. Malnad Law Associates to Respondent No.1 Company has no authority to do so. The



appointment of Shri Praveen is contrary to the order of the CLB. The counsel Shri Pallava R. would contend that he was authorised by the petitioners in CP No.10/2008 who are the founders of Respondent No.1 Company to represent Respondent No.1 Company. Thus, Shri Pallava R. would contend that he is competent to represent the Respondent No.1 Company being duly authorised by the petitioners who are the founders of the Respondent No.1 Company.

On the other hand, the counsel of M/s. Malnad Law Associates contended that the Petitioner No.2 has resigned as Director of Respondent No.1 Company in 2005 and Respondent No.2 was inducted as Director. There was share subscription-cum-shareholders agreement dated 10.09.2005. It is also the contention of the counsel of M/s. Malnad Law Associates that Respondent No.2 invested a sum of Rs. 4 (four) crores in the Respondent No.1 Company. The Petitioner No.1 was later removed as Director. Respondents No.3 and 4 became Directors. The counsel also admitted that in CP No.10//2008, an order was passed by CLB, on 11.01.2012. Various directions were given in the said order and the petitioners preferred Company Appeal No.01/2012 against the said order of CLB before the Hon'ble High Court of Karnataka and the Hon'ble High Court has dismissed the same vide judgment dated 15.06.2012.

It is contended that on 11.01.2013, Shri K. Praveen Narayan and Shri Anil C. Gowda became Directors of Respondent No.1 Company with effect from 10.01.2013 and Respondents No.2 to 4 have subsequently resigned as Directors. It is contended that Shri K. Praveen Narayan and Anil C. Gowda are the Directors of Respondent N.1 Company. It is contended that the petitioners have filed TP No.11/2016 as per the orders of the Hon'ble High Court of Karnataka in WP No.17637/15 dated 24.03.2016 for passing final orders in CP No.10/2008. Since Shri K. Praveen Narayan, being the Director of Respondent No.1 Company has authorised M/s. Malnad Law Associates, to file vakalat for Respondent No.1





Company, M/s. Malnad Law Associates is alone competent Advocate to represent Respondent No.1 Company.

The undisputed fact is that Respondent No.1 Company, being represented by Shri K. Praveen Narayan, is said to have authorised M/s. Malnad Law Associates to file vakalat, Shri Mohammed Ali Azgar has filed vakalat for Respondent No.1 Company dated 07.07.2017. Along with the vakalat for Respondent No.1 Company, the counsel has filed a memo attaching therewith a copy of the order of the Court of Additional City Civil Judge, Bangalore City, passed in IA No.22/2016 in OS No.6686/2009. The counsel has also attached the order sheet FR 3763/09 in OS no.6686/2009 along with the Board resolution dated 06.05.2017 of the Respondent No.1 Company.

Shri Pallava R. has also filed vakalat dated 07.06.2017, to represent Respondent No.1 Company signed by Petitioner No.1 in the main petition. In other words, Shri Pallava R. was said to have been authorised by the Respondent No.1 Company and signed by Petitioner No.1 in the main petition as the Director. There is no Board resolution for this vakalat filed by Shri Pallava R. Interestingly, Petitioner No.1 in the main petition has given authorisation to Shri Pallava R. to file vakalat on behalf of Respondent No.1 Company.

The petitioners have filed CP No.10/2008 against Respondent No.1 Company and Respondents No.2 to 4 who are its Directors. The undisputed fact is that when CP 10/2008 was pending before the CLB, an order dated 11.01.2012 was passed in the said CP containing certain directions. It is the case of the petitioners that the directions could not be carried out due to non-cooperation of Respondent No.2. Some civil suits are also pending.

It is the case of counsel of M/s. Malnad Law Associates, that the petitioners had filed Company Appeal No.01/2012 against the order of CLB dated 11.01.2012 before the Hon'ble High Court of Karnataka and the same was dismissed by the Hon'ble High Court. A direction



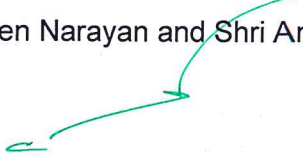
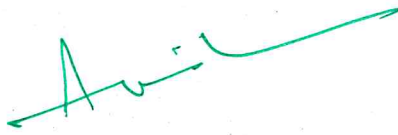
was given by the Hon'ble High Court in WP No.17637/2015 that the petitioners herein shall file application before the CLB and the final order shall be passed by the CLB.

On the abolition of CLB, this matter was transferred from CLB, Chennai to this Tribunal and it is re-numbered as TP No.11/2016.

The main contention of Shri Pallava R. is that as per the order of CLB, dated 11.01.2012, neither Respondent No.2 nor anybody can represent Respondent No.1 Company as Respondents No.2 to 4 were ceased to be the Directors of Respondent No.1 Company. The order dated 11.01.2012 contained certain directions and those directions are stated in the memorandum of objections filed by Shri Pallava R. on behalf of the Respondent No.1 Company. It is also the case of the petitioners in the main petition that one of the directions was not complied. Final order can be passed only after the parties comply the directions. Shri Pallava R. has also filed order copy of the Hon'ble High Court of Karnataka in WP No.17637/15 dated 24.03.2016. The relevant portion in the order is as below:

- "4. ... At the first instance, as noticed, the first respondent through its order dated 11.01.2012 has issued certain directions. Since, it is the case of the petitioners that the same are not adhered to by the second respondent which is causing prejudice to them, all subsequent developments are to be brought to the notice of the first respondent by the petitioners on filing an appropriate application before the first respondent.
5. If such application is filed by the petitioners, the first respondent shall take note of the same, provide opportunity to the second respondent and thereafter consider the matter in its correct perspective in an expeditious manner and dispose of the same in accordance with law."

It is clear from the above order of the Hon'ble High Court of Karnataka, that the petitioners in the main petition to file application before the CLB and the CLB to dispose of the matter as expeditiously as possible. The petitioners cannot say that by virtue of CLB order 11.01.2012, Respondents No.2 to 4 ceased to have control over the Respondent No.1 Company. No doubt, Respondents No.2 to 4 have resigned as Directors of the Respondent No.1 Company during the pendency of this case. But, Shri K. Praveen Narayan and Shri Anil





C. Gowda are continued as Directors. M/s. Malnad Law Associates have also filed order copy in IA No.22/2016 in OS No.6686/2009. In the said IA, a similar objection was raised by the petitioners herein who are defendants No.2 and 3 in OS No.6686/2009 that Shri R. Pallava is only competent to represent the Respondent No.1 Company in the said case. The said IA was dismissed by the Civil Court and the counsel of M/s. Malnad Law Associates has relied on this order of the Civil Court to show that the Civil Court has also declined to recognise Shri R. Pallava as competent to represent Respondent No.1 Company.

We have seen the order. It is true that in an Interlocutory Application filed by the petitioners in this case, who are defendants No.2 and 3 in the said civil suit have sought a relief that the counsel appearing for Respondent No.1 Company be discharged and Shri R. Pallava be recognised as counsel for the Respondent No.1 Company. However, the Civil Court has dismissed the application.

Therefore, Shri R. Pallava cannot represent Respondent No.1 Company in this matter. The CLB had passed an order dated 11.01.2012 with some directions. The directions were not complied. Therefore, the main petition is deemed to be pending. As per the directions of the Hon'ble High Court of Karnataka in Writ Petition cited supra, the petitioners have filed application. The petitioners cannot authorise an Advocate to represent Respondent No.1 Company since the main petition is deemed to be pending as final order is yet to be passed. The directions of CLB are yet to be complied.

In the result, this Tribunal accepts the vakalat filed by M/s. Malnad Law Associates for Respondent No.1 Company and the Tribunal further rejects the vakalat filed by Shri R. Pallava for Respondent No.1 Company.

  
(ASHOK KUMAR MISHRA)  
MEMBER (TECHNICAL)

  
(RATAKONDA MURALI)  
MEMBER (JUDICIAL)