

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
ORDER ON THE ELIGIBILITY OF SRI A.V.NISHANTH, ADVOCATE TO
APPEAR ON BEHALF OF THE 1ST RESPONDENT COMPANY
IN**

C.P No.10/2016

DATED: FRIDAY THE 28TH DAY OF APRIL 2017

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

Mr. HIMAYATH ALI KHAN & 3 OTHERS - PETITIONERS

Vs

M/S ASSOCIATE DÉCOR LTD. AND 24 OTHERS - RESPONDENTS

PARTIES PRESENT:

- 1) Mr. B.C.Thiruvengadam, Counsel for Petitioner
- 2) Mr. B.T.Manik, Counsel for petitioner.
- 3) Mr. Sajan Poovayya, Senior Advocate –
M/s Key stone Partners for Respt.1
- 4) Mr. Pradeep Nayak, Advocate for Respt. 1
- 5) M/s AZB & Partner, Advocates for R2-21
- 6) M/s VGB Associates for Respdt. 22

Heard on: 22/11/2016, 09/12/2016, 24/01/2017, 228/02/2017, 29/03/2017,
05/04/2017 and 20/04/2017

ORDER

When proceedings are pending in C.P No.10/16 and when company petition was listed on 5th April 2017 Shri A.V.Nishanth, Advocate appeared claiming that, he was duly authorized to represent the 1st Respondent Company pursuant to Board Resolution dated 3rd April 2017. Firstly, this Tribunal cannot admit the vakalath of Shri A.V.Nishanth to represent the 1st Respondent Company, because M/s Key stone Partners had already filed vakalath for the 1st Respondent Company. Secondly, Shri A.V.Nishanth has not obtained “No objection” endorsement from the previous counsel i.e., keystone partners. The Counsel on record appearing for 1st Respondent Company contended that, he was duly authorized to file vakalath for the company. The Counsel would contend that, the authorized person of the company had given vakalath for the 1st Respondent Company. He contended that, vakalath was filed along with Board Resolution copy certified by two Directors of the Company. The resolution of the Board of Directors is dated 22nd September 2016. Resolution copy is enclosed to the vakalath. It is contended the company through its Counsel already filed its objections/counter to I.A 12/2017.

The contention of Counsel Sri A.V.Nishanth that, there is no need to obtain "no objection" from Keystone Partners who filed vakalath at the first instance to the Company. In this connection, the Counsel has relied on the decision of Hon'ble High Court of Karnataka at Bengaluru reported in AIR 2017 kar.in Miscellaneous First Appeal No. 6526/2013(Lac) – Karnataka Power Transmission Corporation Ltd., V. M. Rajashekar.

The Hon'ble High Court of Karnataka at Bengaluru has held in the decision that a party has a right to select his own counsel. The second contention of the learned counsel that, on 3rd April 2017 the Board Meeting was held in which a resolution was passed that, the earlier resolution dated 22nd September 2016 of Board of Directors meeting is not approved. It is contended in the Board Meeting held on 3rd April 2017 the earlier Resolution of the Board dated 22nd September 2016 was not approved. Therefore, the vakalath earlier filed on behalf of the company is no longer valid and therefore he is alone entitled to represent the company and his vakalath be recognized and permitted to represent the company. At the first instance Keystone Partners filed vakalath for the 1st Respondent Company. It is also interesting to note that, objections were also filed on behalf of 1st Respondent Company in I.A 12/17. When matter is being listed from time to time and on 5th April 2017, Shri A.V.Nishanth appeared and wanted to file vakalath for 1st Respondent Company. Since there was already vakalath filed for the Company, the Tribunal has to take a decision who is competent to represent the 1st Respondent Company among the two.

A resolution was passed on 22nd September 2016 by the Board of Directors. The copy of resolution was filed along with vakalath. At the first instance, vakalath was filed by the Keystone Partners for the 1st Respondent Company. We have seen the vakalath and the Resolution. Mr. Sachin S.Shetye, Legal Consultants, Mumbai was authorized to represent the company in all judicial, quasi-judicial etc., matters. M/s Keystone Partners are holding vakalath for 1st Respondent Company which was given by the duly authorized representative of the Company. The question whether another Advocate can file vakalath for the same company when an Advocate already holds vakalath. Long prior to the filing of company petition the Board of Director passed Resolution on 22nd September 2016 appointing authorized

person. The vakalath was filed on behalf of the company by M/s Keystone Partners given by authorized person which is in conformity with the Board Resolution.

While so, when proceedings are pending the 1st Petitioner, 22nd Respondent and 23rd Respondent who are the three Directors among other Directors convened the Board Meeting on their own on 3rd April 2017 and one Retired District Judge was appointed as observer and one Practicing Company Secretary was appointed to record the proceedings. The three Directors who are 1st petitioner, Respondent 22 and 23 passed a Resolution that the minutes dated 22nd September 2016 has not been approved as it is fabricated and that Mr. Sachin S. Shetye was not authorized to represent the company and that vakalath filed by him was withdrawn and the Minutes dated 22nd September 2016 is rejected.

We have gone through the Articles of Association of the Company. As per Articles 22 (i) of the Articles of Association of the company that, Managing Director and Secretary on the requisition of President/two or more Directors of the company shall convene a meeting of the Board of Directors. One week advance notice to be given and it shall be in writing. The quorum for meeting is 1/3rd of the total directors or two whichever is higher.

Articles 25 of Articles of Association of the Company provides for the Board of Directors to appoint a Power of Attorney under the Company's seal, any person to be the attorney of the Company for such purposes and for such period and subject to such conditions.

We have seen Minutes of the Board Meeting held on 3rd April 2017 where in three Directors alone attended, who are the 1st Petitioner, R22 and R23. R22 is no other than the brother of 1st Petitioner and R23 is also related to them. The resolution dated 3rd April 2017 reads that other Directors were informed but they did not attend. The resolution reads as if Board Meeting held on 22nd September 2016 is fabricated and contrary to law etc.,

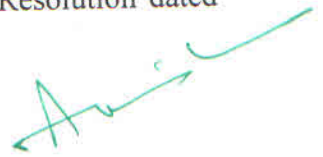

When proceedings are pending R23 representing 1st Respondent Company filed writ petition bearing No. 16529/17 in the Hon'ble High Court of Karnataka at Bangalore against this Tribunal, and also against the petitioners in C/P 10/2016. Subsequently on the order of Hon'ble High Court of Karnataka this Tribunal was deleted from the array of respondents. Hon'ble High Court of Karnataka while

disposing of writ petition observed that, the NCLT after deciding who would represent the company and then only to decide other Applications filed for various interim reliefs after giving opportunity to the concerned counsel.

R23 who is one of the Respondent has signed in the vakalath on behalf of 1st Respondent Company, which is sought to be filed by Shri A.V. Nishanth in this case. It is also interesting to note the 1st Petitioner who has filed company petition against the 1st Respondent Company and other Respondents including R22 and R23, they came together convened Board Meetings passed a Resolution dated 3rd April 2017. It is also clear from the Minutes of the Board Meeting dated 3rd April 2017 that, company secretary did not convene the meeting though requested to do so. It is not known why company secretary declined to convene Board Meeting.

The resolution simply states that, Board Meeting held on 22nd September 2016 is fabricated etc., There is no other information that, subsequent to 22nd September 2016 any Board Meeting was held. When proceedings are pending in the Tribunal, a letter was addressed by R22 to the Company. A reply was given on behalf of the Company marking a copy to the Tribunal wherein company reiterates that Board Meeting was held on 22nd September 2016 and resolution was passed appointing Mr. Sachin S.Shetye as Authorised Representative of the Company and it is further stated that R22 did not attend the said meeting. When a resolution was passed by the Board of Directors on 22nd September 2016 which was prior to filing of the Company petition in which Mr. Sachin S.Shetye was appointed as Authorised Representative to represent the company in all judicial, quasi-judicial, Counsel etc., by which M/s keystone partners filed vakalath for the Company and when such resolution was duly passed.

It is very interesting to note that, when proceedings are pending a Board Meeting was convened by 1st Petitioner, R22 and R23 and passed a resolution as if the earlier resolution passed in Board Meeting held on 22/09/2016 was not approved and that R23 was empowered to represent the 1st Petitioner Company. It is very clear, there are other Directors who have not attended the said Board Meeting held on 3rd April 2017. Majority of the Directors have not attend this Board Meeting convened by 1st Petitioner, R22 and R23. It is not known, what was the need to replace the Counsel who was duly appointed to represent the company in pursuance of Board Meeting held on 22/09/2016. The Board Resolution dated



03/04/2017 which was relied by the Counsel Shri A.V.Nishant shows that Board Resolution dated 22/09/2016 is a fabricated one. Nothing is on record for this Tribunal to come to conclusion that, Board Resolution dated 22/09/2016 is a fabricated resolution. In the absence of any material the said Board Resolution binds on the company and all persons connected to the company. Therefore, the 2nd Board Meeting held on 3rd April 2017 convened by 1st Petitioner, R22 and R23 cannot be taken into consideration. When company already appointed an Advocate basing on a resolution dated 22/09/2016 and acting on the said vakalath further proceedings have taken place another Advocate cannot represent the same company by way of Board Resolution dated 3rd April 2017.

In the light of above discussions, we are of the opinion that, Sri A.V. Nishanth cannot be permitted to represent the company by virtue of Board Resolution dated 3rd April 2017. Therefore, the Vakalath filed by Sri A,V, Nishanth for 1st Respondent Company stands rejected.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 28th DAY OF APRIL, 2017