

9

NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 12/04/2017 AT 10.30 AM

PRESENT: SHRI K. ANANTHA PADMANABHA SWAMY, MEMBER-JUDICIAL
SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

COMPANY APPLICATION NO. :
PETITION NUMBER : TCP/121/2016
NAME OF THE PETITIONER(S) : M. Swaminathan & 2 others
NAME OF THE RESPONDENT(S) : M/s Propel Valves Private Limited & 3 others
UNDER SECTION : 397/398, 235, 237

S.No.	Name (in Capital)	Represented by	Signature
-------	-------------------	----------------	-----------

1. A.K. MYLSAMY
P.M. VATSALA

counsel for petitioners

P.M. Vatsala

2. M. S. Sampath

Counsel for R2

A -

3. M/s. G. SIVASUBRAMANIAM
S. SATIYA CHANDRA

Counsel to R3 & R4.

- G.S.

ORDER

Counsel for Respondent filed C.A.No.8 of 2016 in C.P.No.55 of 2013 that has been filed before the CLB which stood transferred to NCLT and renumbered as TCP No.121 of 2016. In the application, details have been given pertaining to the allegations levelled against R5 and R6 and stated that the investigating authorities after conducting the investigation reached to the conclusion that there is no violation of the law and filed the closure report. The police findings, particularly provide that the complaint is vexatious and has been filed due to the personal rivalry between the parties. In the prayer, it has been averred that based on the said findings, the company petition be dismissed. It has also been averred that the Sub-Inspector of Police, District Crime Branch, Vellore, be directed to produce the closure report with reference to C.No.7/Camp/IGP-NZ/2013 dated 3.1.2013 and C.No.3/DCB/VLR/2014. The C.A. has been filed on behalf of the 2nd Respondent. The counsel for petitioner has filed a common reply to C.A.Nos.5 & 8 of 2016 stating therein that the Company petition has been filed under section 397, 398, 235 and 237 of the Companies Act, 1956, setting out several allegations pertaining to misfeasance, mismanagement and oppression by 5th and 6th Respondents for which documentary evidence is placed on record and the reliefs claimed cannot be denied based on the investigation conducted in the complaint, because the criminal investigation is an independent proceeding which cannot be banked upon to decide the matter complained of in the company petition and prayed to dismiss the C.A.

2. We have heard both of the counsels. As per the criminal jurisprudence, the investigating authorities have to remain confined to the criminal procedure though very high degree of proof is required to prove the violation of criminal law. Yet, the investigating authorities cannot rope ⁱⁿ the matters complained of under Section 397 and 398 of the Companies Act, 1956.

3. The submissions made by Counsel for Respondent No.2 are that the investigation has been carried out and closure report has been filed. The issue involved therein is similar to the issue that has been raised in the company petition. Therefore, there is bearing of the investigation as to the enquiry to be conducted by the Tribunal on the matters complained of. We consider that this Tribunal can take note of the conduct of the parties. The Respondents can make submissions based on the record that is produced before this Bench along with the pleadings. But the result of the criminal investigation cannot have any direct bearing on the enquiry to be held under Section 397, 398, 235 and 237 of the Companies Act, 1956. The Tribunal is having wider powers to inquire into the matter complained of and cannot bank upon any result that might have been drawn by the Investigating authorities in the criminal matter. The arguments which have been submitted by the counsel for Respondent No.2, if accepted, will go to pre-empt the proceedings of this Tribunal. This Tribunal is bound to make any inquiry of the matter complained of and to reach a right and just conclusion in order to regulate the affairs of the company concerned and to order for surcharge, if any, on the defaulting officials of the management including the Directors of R1 company. In view of this, C.A.8 of 2016 stands rejected. The parties are directed to submit the final arguments and during the final arguments, the counsel for Respondent is at liberty to point out any relevant facts which may have some bearing on the conduct of the petitioner. Put up on 13.06.2017 at 10.30 A.M. Pronounced in the open court.

(K. ANANTHA PADMANABHA SWAMY)
(MEMBER (JUDICIAL))

(CH. MOHD. SHARIEF TARIQ)
(MEMBER (JUDICIAL))