

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

CA No.02 of 2014 ✓

In

CP No.109 of 2012 ✓

(TP No. 195/HDB/2016) ✓

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Date of Order: 03.11.2016 ✓

Between:

1. Mr. P. Ram Bhoopal
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
2. Mr. G. Vishnu Bhoopal,
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
3. Mr. Sree Ram Reddy
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
4. Ms. Sarojini Sree Ram Reddy,
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
5. Ms. Saraswathi Priya Reddy
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.
6. Ms. Tripti Reddy
Plot No. 265H, Road No. 10,
Jubilee hills,
Hyderabad-500033.



7. Ms. Giridhar Reddy
Flat No. 303, Sree Matha Nilayam,
Srinagar Colony, Kesava Nagar,
Hyderabad-500073

...Applicants/Petitioners

AND

1. Pragnya Riverbridge Developers Limited
305, 3rd Floor, Topaz Building,
Amrutha Hills, Panjagutta
Hyderabad-500082.

2. Pragnya Capital I Private Limited
C/o. IMM Limited, Les Cascadas,
Edith Cavell Street,
Port Louis,
Mauritius.

3. Mr. Subba Rao Dukkipati
Plot 143/A, Road No.10,
Jubille Hills,
Hyderabad-500033.

4. Mr. Gopal Menon
140, Franklin Street,
Apt 3A, New York, 010013,
United States of America.

5. Mr. Padmanabhan Balasubramanian
6-3-787, Flat No.509, Royal Pavilion,
Next to RBI Staff Quarters,
Ameerpet,
Hyderabad-500016.

6. Mr. Talatam Srinagesh
Plot No.269, 2nd Floor,
Road No.12, Mla Colony,
Banjara Hills,
Hyderabad, 500034

...Respondents/Respondents



Counsel for the Applicants/Petitioners:

Shri V. Harish Kumar

Counsel for Respondents No.1 to 6:

Shri S. Ravi, Senior Counsel

Mr. H. Rajesh Kumar

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

ORDER

(As per Rajeswara Rao Vittanala, Member (Judicial))

1. The Company petition bearing No. 109 of 2012 was initially filed before the Hon'ble Company Law Board, Chennai Bench, Chennai. On the constitution of NCLT Bench at Hyderabad Bench for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding it.
2. The CP No. 109 of 2012 was filed by Sh. P.Ram Bhoopal and 6 others, under Sections 111A, 237, 397, 398, 402, 403, 406 of the Companies Act, 1956 r/w Schedule XI of the Companies Act, 1956 by interalia seeking to regulate the conduct or affairs of First Respondent Company in future; to direct the respondents to take suitable steps to demerge the non-residential portion of land in favour of entity owned and managed by petitioners; to declare the resolution of the Board Meeting held on 05.11.2012 as null and void, etc.
3. The CA No. 2 of 2014 has been filed by the petitioner in main CP No.109 of 2012 under Section 10E and 403 of the Act read with Regulation 44 of the Company Law Board Regulations, 1991 by interalia seeking directions against respondents to immediately stop the activities that are being carried on in the commercial portion of the land admeasuring 7.931 acres at Rajahmundry

Project; to restrain the respondents from dealing with the said land etc.

4. The brief facts leading to the filing of present application are as follows:

- i. The Company petition bearing No. 109 of 2012 was filed by petitioners before the CLB by alleging various acts of oppression and mismanagement by the respondents. One of the main issues raised in the petition is the transfer of usage of the commercial portion of the land at Rajahmundry to the Applicant/petitioners, since they have invested huge money to the tune of Rs. 9.5 Crores in the Company for that purpose. The respondents, after having agreed to exit the company by selling the shares to the applicants, suddenly started developing property in question while issue was pending before this Tribunal. They have also signed for Memorandum of Understanding to settle the issue. The applicants, on coming to know that the Respondents are developing the commercial portion of the land in question, wrote a letter to 6th Respondents asking them to explain for the reasons for the interference in the commercial land. However, the respondents failed to respond and the respondents are going ahead with their plans.
- ii. The CLB passed an interim order dated 02.12.2013 by interalia directing the Respondents to continue the 1st Petitioner as Director until further orders and also directed them to maintain status quo in the respect of the share holding pattern of the company prior to the EOGM dated 16.11.2013.
- iii. Since, the applicants have filed CP, the 7th Respondent have temporarily stopped to take possession of the commercial land for its school activity. However, it is alleged, the



respondents started developing property right away on the commercial land, which is definitely an act of oppression of the rights of the applicants.

- iv. So, the applicants sought a direction to respondents to immediately stop all the activities on the commercial land admeasuring 7.931 acres at Rajahmundry Project and also restrain them from doing anything till the disposal of the Company Petition.
5. Heard Shri V. Harish Kumar, learned counsel for petitioner and, Shri S. Ravi, learned Senior Counsel along with Sri H. Rajesh Kumar, for Respondents, and we have carefully perused pleadings of the parties and materials filed in their support.
6. Shri V. Harish Kumar, while reiterating the averments made in the application, has further submitted that the Respondents demanding Rs. 5 Crores from applicants who are minority shareholders holding only 25.22% of the Company is nothing but oppressive action being resorted to by the Respondents. He has further submitted that the Respondents have removed the 1st applicant as Director at the AGM held on 26.09.2014 in sheer violation of the order of the CLB dated 02.12.2013. After throwing the 1st applicant from the directorship of the Company, the Respondents have passed a Board Resolution for leasing out a part of the commercial portion to the 7th Respondent in the CP. However, the Respondents, though stopped for some time, have now started developing the land in question, which is definitely an act of oppression of the rights of the applicants.

Therefore, he prayed the Tribunal to direct the Respondents to stop all the activities and to further restrain them from interfering in the commercial portion of the land in any manner till the disposal of the present Company petition.

7. Shri S. Ravi, learned Senior Counsel for Respondent Nos.1, 3 to 6, while reiterating the averments made in the common counter dated 07.01.2015 filed on their behalf has further contended that the present application has been filed on a totally vexatious and unsustainable grounds and the relief asked in the present application was not granted by the CLB even though it was asked for. The applicants cannot once again file another application like the present to press for the same relief. The applicants have suppressed vital and critical facts of the case. The learned Senior Counsel further disputed the various contentions raised with regard to the alleged draft MoU and even without discussing a single aspect of the MoU with the Respondents, have rushed to this Tribunal and it is premature and ought to be dismissed in limine. He further submitted that the applicants are at liberty to discuss with the Respondents if the demand of Rs. 5 Crores was excessive.

The learned Senior Counsel further submits that the applicants, even without speaking a single word to the Respondents, have filed the present application by alleging oppression and mismanagement. They have not granted any time to respond to their letter dated 22.11.2014.

8. The learned Senior Counsel has specifically denied the contention of the applicants that the Respondent No.1 Company was using the commercial property in question. It is further stated there have been constructions put on only 3 portions of the commercial property. On one portion, there is a club house foundation, which was put up well before the applicants acquired the shares. The present club house foundation is being dismantled for redesigning, which is a commercial decision and the applicants cannot have a say in the same. It is further stated that on the two portions, there have been buildings that have been put up since 2011, that is well before filing of the present petition and continue to remain there. Hence, they

denied that there is any sudden change being happened on the commercial property in question. In any case, there is no injunction restraining Respondent No.1 Company from developing and/or carrying out any activity on the said property. Moreover, the relief asked in the present application is in the nature of final relief and it cannot be urged in miscellaneous way. It is further stated that there is no delay on the part of the Respondents in arguing the case. The 1st applicant was not removed as alleged but he was not re-elected as Director. It is further contended that there is no contractual understanding between the parties. Moreover, the Company is further obligated to develop commercial property as per the Joint Development agreement dated 19.06.2009, failing which it would be in breach of its obligations under that agreement.

9. The main CP was filed by seeking the following relief:

- i. To regulate the conduct of the affairs of the 1st Respondent Company in future;
- ii. To direct the Respondents to adhere to the Joint Development Agreement dated 19.06.2009 so that the 1st respondent company would not be committing breach of said agreement due to acts/omissions of the second respondent;
- iii. To direct the Respondents to adhere to the Letter of Interest dated 14.07.2011 and Share Holders Agreement dated 28.09.2011 and not to deviate from the said agreements;
- iv. To direct the Respondents to take suitable steps to demerge the non-residential portion of land to and in favour of an entity owned and managed by the petitioners, subject to the provisions of Section 391 to 394 of the Companies Act, 1956;
- v. To declare the Resolutions passed at the board meeting held on 05.11.2012 with regard to Demerger, New Share

Purchase Agreement and Leasing out of School Premises to M/s. Educomp Infrastructure and School management Limited as null and void;

- vi. Any other order which in the opinion of this Hon'ble Bench is just and equitable and thus render justice.

10. The issue of interim relief will be considered at the time of admission of the case, in order to protect the interest of the parties concerned. Such interim relief should always be in consonance with the main relief asked in the main case. In the present case also, the CLB has already considered the issue of interim relief and passed an interim order dated 02.12.2013 protecting the interest of the applicants by directing the Respondents to continue the first applicant/petitioner as Director until further orders and also directed to maintain status quo in respect of the share holding pattern of the Company prior to the EOGM dated 16.11.2013.

The purpose of passing interim orders is to protect/prevent any immediate damage or loss likely to cause to the litigant (s). The applicants cannot raise each and every act of the Company, after filing a case in the Tribunal in order to stall all activities of the Company. It is not in dispute that there is no order restraining the Company in question from doing its normal business and, the interests of the applicants are already protected by the CLB as mentioned above.

11. As extracted above, the relief asked in the present application was not there in the main CP directly. And thus whether the allegations made in the present application would constitute oppression or mismanagement, as alleged in the main Company petition, are to be examined at the time of final hearing of the case. Since the interests of the applicants are already protected by the CLB by interim order dated 02.12.2013, we are not persuaded to consider



further interim relief as asked for in the present application. And applicants also failed to make out any case so as to consider further interim relief. The applicants can urge all available pleadings with reference to the main relief asked for in the CP, at the time of final hearing of the case. It is also stated that pleadings in the main CP are already completed. We are also ready to take up the main case for final hearing.

12. In view of the above facts and circumstances of the case, we dismiss the CA No.02 of 2014 in CP No.109 of 2012. We also make it clear that the applicants are at liberty to urge all pleadings which are raised in the present application, at the time of final hearing of CP No.109 of 2012. No order as to cost.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Sd/-

Sd/-

RAVIKUMAR DURAISAMY

RAJESWARA RAO VITTANALA

MEMBER (TECH)

MEMBER (JUDL)

V. Annapoorna

V. ANNA POORNA

Asst. DIRECTOR

NCLT, HYDERABAD - 68