

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH

C.A.No. 138 of 2008

In

CP No. 56 of 2002

(TP No. 163/HDB/2016)

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

Date of Order: 06 .01.2017

Between:

1. Vijayawada Share Brokers Limited
A company incorporated under the
Companies Act, 1956 having its
Registered Office at 31-10-22A
Malaria Office Street, Machavaram,
Vijayawada -520004, rep. by its
Managing Director
Mr. L Nagabhushanam
2. Mr. L. Nagabhushanam
S/o Venkateswara Rao, 57 years
Residing at Door No. 31-10-22A
Malaria Office Street, Machavaram
Vijayawada – 520004, Krishna Dist., AP
3. Mr. Suresh Tatiya
S/o MilapchandTatiya, 56 years
Door No. 11-31-100, 1st Floor
Park Road
Vijayawada – 520001
Krishna Dist, Andhra Pradesh
4. Mrs. K.L. Prashanthi
W/o Mr. K. Vishnuvardhan
28 years, residing at
Door No. 31-10-22A
Malaria Office Street, Machavaram
Vijayawada – 520004, Krishna Dist., A.P



5. Mr. L.A. Prasad
S/o Venkateswara Rao, 59 years
Door No. 8/310-D, 7th Line
Rajendra Nagar
Gudivada, Krishna Dist

....Applicants/Respondents

And

1. Mr. D. Ramakishore
S/o D Janardhan Rao, 41 years
Business, R/o B-7
VenkataBalaji Towers
Mogalrajpuram
Vijayawada – 520010
2. Mr. P Surendra Kumar
S/o Janardhana Rao,
47 years, Business,
C/o. Balajee Chemical Supplies
54-7-41, 3rd Road, 4th Cross
Autonagar
Vijayawada – 520007
3. Mr. K Venkateswara Rao
S/o K. VidyaSagar, 42 years
Business, R/o 26-12-18, 2nd Floor
Boddapativari Street
Near Shailja Theatre
Gandhi Nagar
Vijayawada – 520003
4. Mr. D. Janardhan Rao
S/o D Hanumantha Rao, 66 years
Business, R/o TF-8
Venkat Enclave
Opp. Tagore Rice Mill, Tikkel Road
Vijayawada – 520010
5. Mr. G C S Murthy, S/o Jagga Rao
56 years, Business
R/o 33-11-21, Netaji Street
Seetharampuram
Vijayawada



6. Mr. CH. Rajagopal
S/o Vasudeva Murthy
51 years, Business
2nd Line, Bavajipeta
Vijayawada – 520003
7. Mr. A. Vijaya Bhaskar
S/o A. Narayana Murthy
28 years, Service
C/o Y. Nagesh, D No. 29-7-48
Vishnu Vardhana Rao Street
Suryaraopeta
Vijayawada – 520002
8. Mr. T Sreenivas
S/o Late T H Babu Rao
43 years, Profession
R/o No.4, SIRI Apartments
Green Lands Hotel Road
Brindavan Colony
Vijayawada – 520010
9. Mr. D Mukteshwar
S/o D Janardhan Rao, 36 years
R/o S-2 Rampriya Residency
Siddartha Public School Back Gate
Lakshmi Nagar
Vijayawada – 520010
10. Mr. Mara Ram Nars
S/o M Hanumanth Prasad, 42 years
Business, 11-15-14/B
VinnakotaVari Street
Vijayawada – 520001
11. Mr. MVK Haragopal
S/o Chakrapani
41 years, Business, 11-25-37
KT Road, Venkata Satya Sai Complex
Vijayawada – 520001



12. Mr. Allagadda Kiran Kumar
S/o Venkateswara Rao
45 years, Business
6-5-73, 5/2 Arundelpet
Guntur
13. Mr. P Koteswara Rao
S/o PV Raghavaiah
44 years, Business, 59A-8/10-9A
Maruthi Co-op. Colony, Patamata
Vijayawada – 520006
14. Mr T Naga Kumar
T Mangapathi Rao, 42 years
Business, Happy Dresses
Main Road
Vijayawada – 520001
15. Mr. Konijeti Suresh
S/o Kannaiah, 43 years, Business
11-9-4, MajjiVari Street
Vijayawada – 520001
16. Mr. T Ratna Srinivas
S/o T.V. Hanumantha Rao
45 years, Business
27-33-6 Gudavalli Vari Street
Vijayawada – 520002
17. Mr. B Sainarayana
S/o GSN Murthy
16-4-417/1, Fort Road
Besides DCMS Godown
Warangal
18. Mr K Prakash
S/o Venkateswarlu
42 years, Business
Main Road, Ponnur
Guntur District
19. Mr. G V N Satish Kumar
S/o G V Subba Rao, 37 years



Business, Brahmin Street
Ponnur, Guntur District

20. Mrs K L Uma

W/o Vasudeva Kumar, 48 years
House Wife, 27-43/2
Governorpet, Mandapati Street
Vijayawada- 520002

21. Mr. Damodar Rathi

S/o Satyanarayan Rathi
47 years, Business
11-56-4, Marwadi Temple Street
Vijayawada 520001

22. Hukumchand Jaju

S/o Baukantlal Jaju
Business, Age 56 years
D. No. 3-3-170, Kuthibiguda
Hyderabad – 27

..... Respondents/Petitioners

23. Mr. C. Koti Ravikiran

Door No. 62-2-23
Opp. Ramalayam
Patamatalanka
Vijayawada – 520014

24. Mrs. A Prasanna

W/o Satyanaraya
39 years, Business
R/o. Krishna Residency
KPHB Colony, Kukatpally
Hyderabad

25. Mrs L Vijaya Lakshmi Devi

W/o L Nagabhushanam
47 years, Business
R/o 31-10-22A, Machavaram
Vijayawada 4, Krishna District

26. Mr L Pandu Ranga Rao

S/o Sundara Ramaiah
70 years, Business



R/o Tikkel Road

Vijayawada – 10, Krishna District

27. Mrs L S Prasunamba

W/o Pandu Ranga Rao

67 years, Business

R/o Tikkel Road,

Vijayawada 10, Krishna District

28. Mr. K Vishnu Vardhan

S/o Madhusdhana Rao

30 years, Business

R/o 31-10-22A

Machavaram,

Vijayawada 4, Krishna District

29. Mr. K Venkateswara Rao

S/o Kutumba Rao

45 years, Business

R/o Yanamalakuduru

Vijayawada Rural, Krishna District

30. Mr. K V Suresh Kumar

S/o Radhakrishna Murthy

46 years, Business

R/o 26-14-243

Near Sivalayam, Bhavanipuram

Vijayawada 12, Krishna District

31. Mr. M Lakshmi Sai Prasad

S/o Nagabhushanam

Old SBI Colony, Mangalagiri

Guntur District

32. Mr. Y RamanaSwamy

S/o Pandu Ranga Rao

Bhagya Laxmi Jewelry Mark

Sharaf Bazar

Tenali, Guntur District

33. Mr. B Madhusudhana Reddy

S/o Seethareddy

Pydaiah Street



Labbipet

Vijayawada, Krishna District

34. Ch. Gandhi Raja

S/o Mallikharjuna Rao

Near: Head Post Office

Eluru, West Godavari District

35. Mr K Srinivas

S/o Anjaneyulu

Opp. FCI Labbipet

Vijayawada, Krishna District

36. Mrs. C Hemalatha

W/o Gopi

Vellala Street

Plot No. 37, Purasawakkam

Chennai

37. Mr. Sourabh Malhotra

S/o Naresh Chandra Malhotra

Sri Venkateswara Hill Colony

Road No. 3, Banjara Hills

Hyderabad-43

38. Mr K V Nayak

S/o K G Nayak

26-13-595/55, Padmavati Nagar

Hyderabad-4

39. Mr P Ramachandra Murthy

S/o P V N Sharma

29-3-5/1 Opp. Abhinava Hotel

Vijayawada 2

40. Mr. Siva Kumar Agarwal

S/o Roop Chand Agarwal

Plot No. 444, 4th Floor, Indira Towers

Bandar Road

Vijayawada, Krishna District

41. Mr K A V Subba Rao

S/o Krishna Murthy



Patnam Bazar, Guntur
Guntur District

42. Mr. Namburi Sekhar
S/o Nageswara Rao
Sai Anna B-24, DD Colony
Bagh Amberpet
Hyderabad 13

43. Mr S N Malleswara Rao
S/o S G K Murthy
4-2-297 Sultan Bazar,
Hyderabad

44. Mrs. Sarada Singhal
W/o Shiva Kumar Singhal
35-140/8, Fathenagar
Hyderabad-18

45. Mr. G Eswar
S/o Ramalingam
16-31-1186/A,
Raj Bhavan Road, Somajiguda,
Hyderabad

46. Mr. K Madan Mohan
S/o Padmanabha Sastry
106 Kakatiya Apartment
Street No. 2, Habsiguda
Hyderabad-7

47. Mr T Subba Rao
S/o Visweswara Ramam
6-3-596/63/8/3
Padmavati Nagar, Erramazil
Hyderabad

48. K Vasundhara
W/o Nagasudhakara Rao
1st Floor, Block No.4
Venkateswara Building, Patamata
Vijayawada – 520006



49. T. Sushree
C/o A. Hareram
501, Vijayasree Sai Allyssium
Margadarsi Colony, Kothapet
Hyderabad

50. N. Kiranpriya
C/o A V D Ramesh
Sri Harsha Share Consultants
29-19-14,
Dornakal Road, Suryaraopet
Vijayawada – 520002

51. Meerasoni
W/o Nandkishore Soni
D 12, Industrial Estate
Vijayawada – 520007

52. T Anil Kumar
S/o Venkata Subbarao
Mogalrajpuram
Vijayawada, Krishna District

53. N Sivaprasad
S/o Late Lakshmi Narasimha Murthy
Kamakotinagar, Vidhyadharapuram
Vijayawada – 12

.. Respondents/third Parties

Counsel for the Applicants:	:	Shri S.V.S.Chowdary with Shri Anantha Raman
Counsel for the Respondents No. 1 to 22:		Shri V.S.Raju
Counsel for Respondent Nos. 24, 25, 28	:	Shri J.Ramesh Babu
Counsel for Respondent No. 23	:	Shri V.Hariharan along with Shri Abhishek Dash

CORAM:

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

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



ORDER

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

1. The Company Petition bearing No. 56 of 2002 (which is referred to as Company Petition hereinafter) was initially filed by Sh. D. Ramakishore and 21 others before the then Hon'ble Company Law Board, Chennai, u/S 397 and 398 of Companies Act, 1956. After considering the case, the Hon'ble CLB was pleased to dispose of CP 56 of 2002 by an order dated 10th November 2006, by appointing a Chairman to carry out directions given in the order. Pursuant to the above order, Vijayawada Share Brokers Ltd along with 4 other Respondents of CP have filed the present CA No.138 of 2008 by seeking some directions. This CA is thus was forwarded to this Bench during July, 2016, upon constitution of NCLT Bench at Hyderabad for the cases belonging to the States of Andhra Pradesh and Telangana. Hence, we have taken this CA on the records of this Bench and deciding it.

2. The brief facts, which leads to the filing of present CA No. 138 of 2008 (which is referred to as 'Application' herein under for brevity) are as follows:

- a. The Company Petition was filed under Section 397 and 398 of the Companies Act, 1956 by interalia seeking directions; to supersede the Board of Directors and to appoint an Administrator to take charge of the affairs of the company; to restrain the Respondents



from entering into or handing over the possession of the Company's landed property to third parties, etc.

b. The Company Petition was finally disposed of, by the CLB, by an Order dated 10th November, 2006 with the following directions:

- i. The Company will convene and hold a meeting of its members to elect directors not exceeding five in number, upon which the board so constituted will appoint one of its directors to be a Managing Director. Hon'ble Justice Mr. P. Ramakrishnam Raju (Retd.) Hyderabad – 500034 will preside over the meeting convened in terms of this order. He is at liberty to take the services of any Practising Company Secretary of his choice in discharge of his functions.
- ii. The Chairman will work out the entire modalities of convening and holding of the general meeting in consultation with the Company;
- iii. The Chairman of the meeting will forward a report on the proceedings of the general meeting within ten days of conclusion of the meeting;

iv. The Board of Directors constituted in terms of this Order shall forthwith replace the existing Board and shall –

- (a) Manage the day to day affairs of the Company as per the Memorandum and Articles of Association of the Company;



- (b) Take necessary steps for due and proper sale of the landed property belonging to the Company under the supervision of the Chairman appointed by this Bench for the best possible price and distribute the sale proceeds among all the shareholders according to their holding in the Company;
 - (c) Deliver share certificates to the members in respect of their holding in the Company.
- v. The sale of 570 sq.yards of the landed property already effected and registered by the Company in favour of third party purchasers is confirmed
- vi. Liberty to apply, in case of any difficulty in implementation of the order was given.
- c. Pursuant to the above Order, Company Appeal No 4 of 2007 and several CAs No 288 of 2008 and batch, were filed before the Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad, by questioning the validity of the said order of CLB and seeking several reliefs by the respective parties. Ultimately, the Hon'ble High Court was pleased to dismiss the said CAs by an order dated 13.03.2008 and also disposed of all CAs filed in the case, by confirming the Order of CLB.
- d. Pursuant to the appointment of Hon'ble Justice Shri P. Ramakrishnam Raju as the Chairman, he has taken necessary action to implement the directions of CLB in the said order. Ultimately, on clearing several legal hurdles/objections by the

parties, he was able to conduct the extraordinary general meeting on 30.08.2008, but results of the elections were ultimately declared on 03.01.2009 by declaring that 5 candidates, who have secured highest votes as elected. The CLB, on filing this application, passed interim orders on 2.1.2009 by observing that any decision that may be declared by the Chairman of the meeting would not be implemented without the leave of the Bench. Hence, the next course of action as contemplated under clause IV of order dated 10.11.2006 i.e., the new board so constituted shall have to manage the day to day affairs of the company as per Memorandum and Articles of Association of the company and to take necessary steps for due and proper sale of landed property of company in question under the supervision of chairman for the best possible price and distribute the sale proceeds among all the shareholders according to their holding in the company and to deliver certificates to the members in respect of their holding in the company are kept pending since the case is pending disposal on this Bench .

- e. The Applicants herein have filed the present Application under Regulation 44 of CLB Regulations 1991 by seeking several directions disputing the votes cast in election etc and sought directions to the Chairman also. The Applicants have questioned the conducting of elections on various grounds and also raised several errors in the finalization of the list of shareholders in conveying and conducting



the meeting etc by the Learned Chairman in accordance with the orders of the Hon'ble Bench. Some of the parties have stated to have instituted several civil suits before civil courts based on the disputes raised in present case.

3. Heard Shri V.S.Raju , the learned Counsel for the Respondents No. 1 to 22, Shri J.Ramesh Babu, the learned Counsel for Respondent No. 24,25, 28 and Shri V. Hariharan along Shri Abhishek Dash , learned counsel for Respondent No. 23 . We have carefully perused all the pleadings of respective parties along with material papers filed in their support.
4. The Company Petition was filed in the year 2002 and more than 14 years have lapsed since then, and still the parties are raising frivolous and pure technical issues so as to see that the issue in question should be kept pending without reaching finality at least in accordance with the directions of CLB. The CLB, after considering the entire issue in depth, has appointed an experienced and highest judicial officer to oversee the directions of CLB to be implemented. It is to be pointed here that the Hon'ble Chairman has not faced any difficulty in implementing the directions of CLB, but the applicants herein raising several disputes , which in our opinion , have hardly have any merits to consider, especially when the order of CLB has become final.



5. It is relevant to point out here that as per Section 430 of Companies Act, 2013, no civil court has any jurisdiction over the matters of Company affairs. Section 430 of Companies Act, 2013 reads as under:

“ No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this action or any other law for the time being in force, by the Tribunal or the Appellate Tribunal. ”

It is to be mentioned herein that the parties have submitted to the jurisdiction of CLB/NCLT and thus the matter was decided and, it has become final and thus all the parties to the litigation are bound by the order of CLB. And they cannot be permitted to raise frivolous litigation(s) by abusing the process of law. Liberty granted by the Tribunal cannot be construed that the litigants can further raise issues with reference to the main issue already decided by the CLB and also appointed appropriate authority to see that its directs should be implemented in toto. Hence, parties can not be permitted to misuse/abuse the process of law by filing frivolous and un-tenable applications. As stated above, the parties have already exhausted alternative judicial remedy. Now, a competent elected Board of



Directors are there and the Learned Chairman would guide the Board to take appropriate decisions in accordance with law. Hence, we reject all the contentions raised in the present application as baseless and not tenable.

6. It is to be mentioned here that CLB, after considering the entire gamut of dispute in question and, after considering various contentions raised by the parties and, after taking into consideration of the settled position of law on the issue, and by exercising the powers conferred under Section 402 of the Companies Act, 1956, has passed the above Order. The Applicants cannot again dispute each and every action taken by the Chairman appointed by CLB. It is not in dispute that the Order was passed with a view to bring an end to the matters complained of in the Company Petition. The Hon'ble Tribunal also considered various suits, land disputes, etc. The Contentions raised on behalf of Respondent No.23 are also not tenable and rejected as being not meritorious to consider as the issue in question has reached finality and only the property of Company remains to be sold and apportioned as directed by the Company Law Board and the newly Constituted Board of Directors, under the chairmanship of Hon'ble Justice Shri P. Rama Krishnam Raju, will take a just and equitable distribution of sale proceeds of property of the Company and deliver share certificates.



7. CA No. 138 of 2008 is filed by Sh. L Nagabhushanam, Sh. Suresh T, Mrs. K.L.Prashanti and Sh. LA Prasad and the first Applicant being the Company (Vijayawada Share brokers Ltd). Again, the same set of people have filed CA No. 81 of 2016 in CA No. 138 of 2008 by raising several untenable pleas including to declare the agreement of sale dated 16.11.2006 and agreement of sale cum GPA documents 17.11.2006 as null and void and unenforceable being executed in contravention of CLB order dated 10.11.2006 in CP No. 56 of 2002. Accordingly, the Applicants sought the following directions in the CA No. 81 of 2016:

- a. To declare the Agreement of Sale dated 16.11.2006 and Agreement of Sale cum GPA documents dated 17.11.2006 as null and void and unenforceable, being documents executed in contravention of the CLB final order dated 10.11.2006 in CP No. 56 of 2002; and direct the Company and the Chairman to not give effect to or implement the Agreement of Sale dated 16.11.2006 and Agreement of Sale cum GPA documents dated 17.11.2006, being null and void documents.
- b. To direct the Company and the Chairman to put the landed property of the Company to proper and transparent sale, including by way of auction, to ensure that fair market value is derived for equitable distribution to the shareholders.

It is to be mentioned here that even though the Applicants are parties to CP No. 56 of 2002 and was very well aware that the Order became



final after the Hon'ble High Court confirmed the Order of CLB, the Applicants herein are bent upon to raise one plea or other, which are not at all tenable and this is nothing but abuse of law and interference with administration of justice. It is also to be on record that several parties to litigation have filed the following suits by raising so many disputes viz OS 554/03 on the file of IV Addl Sr. Civil Judge court, was filed by Sh. D Janardhana Rao, OS 827 of 2003 was filed before the Hon'ble High Court of Andhra Pradesh (Vacation Court), OS 66/04 on the file of the V Addl Sr. Civil Judge, was filed by one Merfin India Ltd against the Vijayawada Share Brokers Ltd for recovery of money, OS 1299/04 on the file of the III Addl Sr. Civil Judge court was filed by one KV Suresh Kumar and 17 others against Vijayawada Share Brokers Ltd represented by Sh. Surendra Kumar, etc. Even now the Applicants are not interested to execute the direction of Hon'ble CLB, Chennai which was passed in CP No.56 of 2002. So, it is a fit case that can be saddled with exemplary costs.

8. The CLB after analysing the issue in question in depth, have concluded there was a deadlock situation in the affairs of the Company and relationship amongst the shareholders was also not reconcilable in view of the several of the litigations and the parties have thus lost mutual trust and confidence. And though the Company became member of Bhubaneswar Stock Exchange Limited and Interconnected Stock Exchange of India Limited as early as in the



year 1996, it never carried out its material objects since its inception. So the Board, in order to remove the existing impasse, was thought it fit to sever relationship by disposing the landed property and apportioning the sale proceeds among the shareholders. In the circumstances, after referring several decisions of courts, the directions as mentioned above were given.

9. Shri V.S.Raju , the learned Counsel for the Respondents No. 1 to 22, Shri J.Ramesh Babu, the learned Counsel for Respondent No. 24,25, 28 and Shri V.Hariharan along Abhishek Dash , learned counsel for Respondent No. 23 have also raised several contentions, which we thought that they are not necessary to advert here in detail for the reasons stated supra.

10. In pursuance to the directions given by this Tribunal vide order dated 18.11.2016, the Learned Chairman was pleased to take necessary action and submitted a report dated 27.12.2016 along with minutes of newly constituted Board of Directors, which is taken on record. In the report, the learned Chairman, inter alia stated that he has requisitioned the services of A.V.Rao, Company Secretary, for assistance for holding EGM, declaration of results etc. Accordingly, on 27.12.2016, all the elected Directors namely P. Surendra Kumar, D. Ram Kishore, A. Jagan Mohan Reddy, K.Venkateswara Rao and P. Venkateswara Rao were present and thus he has constituted new



Board with the above members. Under his supervision, Sri P.Surrender Kumar was elected as Managing Director unanimously. The Learned Chairman also instructed the Board to take further steps in the matter as per directions of this Tribunal passed on 18th November, 2016.

11. In view of above facts of case, the following directions of CLBs order dated 10th November, 2006 remains to be carried out by the newly constituted Board of Directors as mentioned , under the supervision of Learned Chairman :

“ The Board of Directors constituted in terms of this Order shall forthwith replace the existing Board and shall –

(d) Manage the day to day affairs of the Company as per the Memorandum and Articles of Association of the Company;

(e) Take necessary steps for due and proper sale of the landed property belonging to the Company under the supervision of the Chairman appointed by this Bench for the best possible price and distribute the sale proceeds among all the shareholders according to their holding in the Company;

(f) Deliver share certificates to the members in respect of their holding in the Company”



12. In view of the above facts and circumstances of the case, in order to end the longest pending issues of the Company, We dispose of CA No; 138 of 2008 in CP No. 56 of 2008 with the following orders:

- a) The Newly constituted Board of Directors are directed to manage the day to day affairs of the Company as per the Memorandum and Articles of Association of the Company;
- b) Take necessary steps for due and proper sale of the landed property belonging to the Company under the supervision of the Learned Chairman for the best possible price and distribute the sale proceeds among all the shareholders according to their holding in the Company;
- c) Deliver share certificates to the members in respect of their holding in the Company
- d) All the parties to the litigation are hereby directed to extend full Co-operation to the Newly Constituted Board and the Hon'ble Chairman to discharge their legal functions and duties as mentioned above and to see that the affairs of Company complained of come to an end.
- e) CA No. 81 of 2016 in CA No. 138 of 2008 in CP No. 56 of 2002 is dismissed.
- f) The Applicant Nos. 2 to 4 are imposed with a cost of Rs. 50000, which is to be paid to the "Andhra Pradesh Chief Ministers Relief Fund" within a period of three weeks from the date of receipt of copy of the Order.
- g) The newly constituted Board of Directors are directed to look into all the aspects of the issue involved in the case by taking suitable advices



from the learned Chairman and conclude and finalise the issue in question as expeditiously as possible per the directions of the Hon'ble CLB issued vide Order dated 10th November, 2006.

h) All CAs, if any, pending in CP No. 56 of 2002 stand disposed of.

Sd/-

RAVIKUMAR DUR AISAMY

MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)



V. Annapurna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68