

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, AT HYDERABAD**

**C.A No. 2/167/2014**

**(TP No.152/HDB/2016)**

**Date of Order: 06.10.2016**

Between:

1. IJM ( India) Infrastructure Limited,  
Regd. Office at H.No.1-89/1,  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Plot No.41 & 42,  
Kavuri Hills, Phase-1,  
Madhapur,  
Hyderabad-500081, Telangana

..Applicant

And

1. Swarnandhra IJMII Integrated  
Township Development co. Pvt Ltd,  
Regd. Office at 1-89/1, Plot no.41 & 42  
Kavuri Hills, Phase-1, Madhapur,  
Hyderabad-500081, Telangana
2. Andhra Pradesh Housing Board,  
Regd office at 1<sup>st</sup> Floor, 'Gruhakalpa',  
M.J.Road, Nampally,  
Hyderabad-500001, Telangana

..... Respondents

Counsel for the Applicant :

Shri L.V.V. Iyer

Counsel for the Respondent No.2 :

Shri J. Prabhakar

**CORAM**

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)  
HON'BLE Mr. RAVIKUMAR DURASAMY, MEMBER (TECH)



**ORDER**

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

1. The Company Application bearing no. 2/167/2014 was initially filed in the then Hon'ble Company Law Board, Chennai. Upon the constitution of NCLT Bench, at Hyderabad for the States of Andhra Pradesh and Telangana, the case was transferred to this Bench as it falls under the jurisdiction of this Bench. The case is re- numbered as **TP No.152/HDB/2016**.
2. The Company Application was filed by IJM (India) Infrastructure Limited(herein after referred to as the applicant/IJMII), under sections 167 of the Companies Act, 1956 by inter-alia seeking a direction to excuse it for default in holding 9<sup>th</sup> Annual General Meeting (AGM) and, to direct the first respondent company (Swarnandhra IJMII Integrated Township Development Company Private Limited (SITCO) to hold its 9<sup>th</sup> AGM on a suitable date within 30 days from the date of the receipt the copy of the order without prejudice to the rights or otherwise of APHB and the applicant under the DSA or under any Law; to direct that one member of the company present in person or by proxy shall be deemed to constitute a meeting with other incidental directions as deem fit by the Board.
3. The brief facts as set out in the company application basing on the material papers filed in support by the applicant are as follows:



- a) The applicant company was formed and registered under the Companies Act, 1956. The Respondent No.1 Company known as Swarnandhra IJMII Integrated Township Development Company Private Limited, which is referred to as SITCO herein after for brevity, was incorporated on 25<sup>th</sup> March, 2003 with CIN No.U70102AP2003PTC40715 with the Authorised Capital of 10 crores divided into 1,00,00,000 equity shares of Rs.10/- each. The main object of the Company is to carry on the business of development of integrated township and housing projects etc. The AP Housing Board (Respondent No. 2) has come into existence w.e.f. 01.07.1960 under the Andhra Pradesh Housing Board Act, 1956.
- b) The Applicant Company and second Respondent had jointly promoted SITCO as joint sector company, in which Applicant Company and second Respondent hold equity shares in the ratio of 51% and 49 % respectively for the purpose of developing integrated Townships and allied construction and development works. Further, the Applicant and the second respondent entered into a Development & Shareholders' Agreement (DSA) on 04-11-2003 and also a supplemental agreement to the said DSA dated 07-04-2011.
- c) SITCO is also executing another joint venture project at Kukatpally, R.R.District in the state of Telangana. SITCO was offered to purchase additional parcel of land admeasuring about 35.05 acres for developing a project consisting of residential and commercial space in the land. APHB had selected SITCO and, issued letter of award on 31.12.2005



and, subsequently entered into a development agreement dated 08-02-2006.

- d) Due to certain differences / disputes between APHB and IJMII, who are only two shareholders in SITCO, the annual accounts of SITCO for the financial years ended 31<sup>st</sup> March, 2012 and 31<sup>st</sup> March, 2013 could not be approved by the Board of Directors of SITCO as the nominee Directors of APHB had raised few queries in respect of certain expenditure. The queried expenditure related to the financial years prior to the financial years 2011 -12. It is stated all through the financial years from the inception of SITCO and up to the year 2010-11, the annual accounts of SITCO had been audited by Internationally reputed firm of auditors and, they used to be approved/adopted by the Board meetings, where the nominee Directors of APHB were duly to be present and those proceedings also used to be filed with the Registrar of Companies. It is also further stated at no point of time, the nominee Directors of APHB had raised any objection(s) The 9<sup>th</sup> Annual General Meeting of the first Respondent Company was held on 28<sup>th</sup> September, 2012 at 5.45 PM at the office of A.P. Housing Board, Gruhakalpa, Nampally , Hyderabad. Mr. Karikal Valaven, IAS, as Chairman, B.Rajgopala Rao, representing APHB and D. Sreenivasa Rao IJMII were present. During this meeting, by ordinary resolutions, Mr. Teo Teik Thiam was re-appointed as Director of the Company and Karikal Valaven was appointed as Director of the Company. And by Special Resolution, M/s BSR & Associates, Chartered Accountants were re-



appointed as Auditors of the Company to hold office from the conclusion of this meeting until the conclusion of next AGM of the Company. However, due to the objection raised by nominee Director of APHB, the meeting was adjourned sine die for adoption of the annual Accounts for the financial year ended 31<sup>st</sup> March, 2012.

- e) Subsequently, adjourned 9th AGM was held on 30<sup>th</sup> September, 2014 at 12.00 noon at the Registered office of the Company. Since no nominee from APHB was present at the meeting, this meeting was also dissolved.
- f) Subsequently, the APHB had appointed M/s.T.R.Chadha & Co, Chartered Accountants, on 09-04-2013 to conduct an audit of the books of SITCO from its inception. The special audit report of M/s.T.R.Chada & Co was made available to SITCO on 02nd June, 2014. The APHB was reluctant to depute its nominee Director for conducting the Board/ AGM for approval / adoption of annual accounts for the financial years 2011-12, though it made several attempts to convince them.
- g) The SITCO had given proper notice of 14 days to the APHB, in terms of sub-clause (ii) 5.1.7 of the DSA and Article 137 of the Articles of Association of SITCO, to convene a Board meeting on 01.08.2014. However, the nominees Directors of APHB were not present for the meeting and, thus the meeting was adjourned to 08.08.2014 at 11.30 am at the registered office of SITCO. In terms of sub-clause (iii) of Clause 5.1.7 of DSA, the quorum for Board meetings shall be at least one (1)



Director (or his alternate Director), appointed each by the APHB and the applicant, being present in person. If no quorum is present within thirty (30) minutes of the appointed time, the meeting shall stand adjourned to the same day, time and place on the following week. At such adjourned meeting, the quorum shall be constituted by at least two Directors present. A notice of adjourned Board meeting was also given to all the Directors. As per clause 3.1.7 (iii), two Directors present at the Board meeting constitute quorum and, the subject specifically stated in the notice for original meeting can be transacted at the adjourned meeting. Accordingly, the Board of Directors of SITCO proceeded with transacting the business as per the specific agenda attached to the notice of the Board meeting issued vide SITCO letter dated 16-07-2014. So the adjourned 55<sup>th</sup> Meeting of Board of Directors of SITCO was held at the Registered Office of the Company, on Friday, 8<sup>th</sup> August 2014 at 11.30 a.m.

- h) During the above meeting, two Directors namely Sri D.Sreenivasa Rao and Sri Harjeet Singh were present and D.Srinivasa Rao took the chair and, transacted the business. Leave was granted to Mr.Karikal Valaven, IAS and Mr. B.Rajagopala Rao as they were not present at the meeting. By discussing the serious consequences like imposition of fine and imprisonment as per the provisions of the Companies Act, 1956 and 2013, for failing to conduct Board Meetings and AGM, the Board approved the Annual Accounts of the Company for the Financial Year 2011-12 without prejudice to the rights of shareholders with an



observation that it would not affect or jeopardize the interests of APHB and the disputes, if any, can be resolved subsequently to the mutual satisfaction in due course. It was also resolved that the adjourned 9<sup>th</sup> Annual General Meeting held on 28<sup>th</sup> September, 2012 , should be convened at the Registered office of the Company at 12.00 noon on Tuesday, 30<sup>th</sup> September, 2014 to transact the business in the draft relating to the financial year 2011-12.

- i) Accordingly, the said adjourned meeting was held on 30<sup>th</sup> September, 2014 at 12.00 noon. Mr. D.Srinivasa Rao, Mr. Harjeet Singh nominated Directors and Mr. Tan Kian Choon, representing shareholder of IJM were present .Since no representative from other share holder holding 49% share capital(APHB) were present, and there was no quorum, the meeting stood dissolved.
- j) The second respondent (APHB) addressed a letter bearing No.13306/audit/pc/2013 dated 28-07-2014 to the SITCO by informing that, meeting of Board of Directors for approval of the financial statements for the year 2011-12 can be conducted only upon receipt of remarks as sought by the APHB, upon compliance by SITCO of the directions given by the board of APHB and also on fresh appointment of board members by the Government of Telangana consequent to the bifurcation of the State of Andhra Pradesh. In response to the above letter, the SITCO vide its letter no. SITCO/CSLD/2014/8 dated 05.08.2014 explained the APHB the necessity of approval of financial statements at least for the financial year 2011-12 and requested them to





co-operate for the same. In response to this, the APHB addressed a letter no.13307/SITCO/BM/AE/PC/2012 dated 10.10.2014 to the first respondent by inter-alia informing that due to difficulties being faced by it due to bifurcation of state, the APHB nominees may not be able to either attend Board meetings or Share-holders meetings until fresh nomination of Board of Members by the Government of Telangana.

- k) In the above circumstances, the applicant states that they have no other alternative except to approach this Tribunal by seeking a direction to convene the afore said AGM and they could not approach early on the ground since, they at all time, hoped that differences / disputes would be resolved amicably between them.
- l) It is further, stated that as per Section 164 of the Companies Act, 2013 and 167 of the Companies Act, 1956, if the annual accounts of any company are not filed with the Registrar of Companies for a continuous period of three years, it would result in serious non-compliance of the provisions of the Companies Act, 1956 and the Companies Act, 2013 which could lead to disqualification of the Directors and vacation of their office in addition to being punished with levy of penalties including imprisonment. In the circumstances, they could not conduct AGM for the subsequent years also. They further stated that the failure of the SITCO to comply with the provisions of Companies Act, 1956 would be detrimental to the interest of SITCO and its Directors. In the circumstances it is stated that the intervention of CLB is essential in the interest of justice.





m) They relied upon the judgement of Hon'ble Madras High Court rendered in Nungambakkam Dhanarakshaka Saswatha Nidhi Limited Versus Registrar of Companies (1972(42)CC 632, 1972(85) LW 812) and the judgement of Hon'ble Calcutta High court in Coal Marketing Co. of India Private Limited (1967, 37 Comp Cas 720(Cal)) . However, on reading these cases, the ratio decided in these cases are hardly come to the rescue of the applicant herein except some observation made by the Hon'ble High courts.

4. The Respondent no.1 has filed a reply dated 10-12-2014 by submitting that the Respondent No.1 Company has no objection for the present application being allowed.
5. The APHB (R-2) has filed a reply dated 03-10-2015 by inter-alia making several contentions and allegations regarding making profits by SITCO: they have issued show cause notice as to why action could not be taken for termination of the development agreement for phase-2 project. It is also stated that fresh nominees to be appointed on behalf of APHB by the Telangana Government. They have explained that due to the difficulties being faced by them due to pending demerger of APHB consequent to bifurcation of the State of Andhra Pradesh, it could not attend the Board meetings of the first respondent Company. It is also contended that all the transactions and conducting Board meeting of first respondent company



are void ab initio. It is asserted that absence of its nominee was neither wilful nor wanton. They have also denied that the due to certain differences in relation to certain expenditure related to the financial years 2011-12 was the sole reason for not attending the AGM. They disputed the bonafides of the SITCO to settle the issue amicably. They also stated that the Respondent No. 1 took its own time for submission of replies to the letter written by them and thus they cannot be held responsible in not conducting the AGM in question. They also suggested that a special investigation or independent auditors is required to be appointed for ensuring proper administration of the SPV (SITCO) for ensuring justice.

6. The second respondent has as also filed an additional counter dated 28-09-2016 by stating that, as per GO.Ms No. 9 Housing (HB) department dated 02-07-2016 issued by the principal secretary to the Government of Telangana, there is a change in nomenclature of Housing Board in Telangana state and, consequently, the Housing Board in the State of Telangana will be called as Telangana Housing Board. It is further, stated all projects located in Telangana state are presently being looked after by the Telangana entity as the assets would eventually vest with Telangana Housing Board on location basis as per the Provisions of Section 53 of AP Re-organisation Act, 2014.
7. Heard Shri LVV Iyer, learned senior Counsel for the applicant and Shri J.Prabhakar, Learned counsel for the APHB, the second Respondent and



have perused all the pleadings along with material papers filed by both the parties.

8. The Learned Senior Counsel for the applicant, while, reiterating averments made in the application, have further submitted that there is no delay in approaching the Tribunal, and in fact, the present application can be filed without recourse to the limitation. He further produced a copy of GO.Ms No. 45, Law(F), 1<sup>st</sup> June, 2016 published in Telangana Gazette and thus contended that the word “ Telangana “ was substituted in the place of ‘Andhra Pradesh’ so far as the adoption of laws are concerned. So all the actions taken by the APHB will bind the Telangana Housing Board also. And there is no necessity to implead Telangana Housing Board to the present application.

The Learned counsel also relied upon the judgement of Hon’ble Supreme Court in Balkrishan Gupta and others Vs. Swadeshi Polytex Ltd and another(AIR 1985 Supreme Court 520) and another Judgement of CLB, Principal Bench, New Delhi (CDJ 1998 CLB New Delhi 038 ) in Taihan Electric Wire Co. Ltd Vs. TDT Copper Ltd.

9. The Learned Senior Counsel for the Respondent No. 2, while reiterating the averments made in the main reply and additional reply, has further stated that the Government of Telangana has issued GO.Rt No. 1061 dated 16.05.2016 constituting a Cabinet Sub Committee consisting of Sri



A.Indra Karan Reddy, Minister for Housing, Law and Endowments; Sri E.Rajender, Minister for Finance & Civil Supplies and Sri P.Mahender Reddy, Minister for Transport, referring several issues including to decide on Joint Venture Project under Equity Model with M/s IJM India Infrastructure Ltd(in SPV namely M/s SITCO Private Limited ) ; to decide all general issues associated with all joint Venture projects having financial /legal implication on Housing Board etc. And submitted that conducting a meeting at this stage would virtually lead to approving the statements as got prepared by the applicant and non- impleading the Telangana Housing Board is also fundamental flaw. Hence, he sought for dismissal of the present application with exemplary costs and pass such other order(s), the Hon'ble Board deems fit and just. The learned counsel also suggested that instead of 30 days as sought for in the application to convene AGM, he agreed for 60 days instead.

10. In the light of above discussion of the case, the following issues raise for consideration in the present application:

- a) Whether the National Company Law Tribunal is having jurisdiction to entertain this application and to consider the reliefs as sought for by the applicant;
- b) Whether the Applicant/SITCO are justified for not conducting the Board Meetings/Annual General Meetings;
- c) Whether the APHB (second respondent) is justified in not attending the Board Meetings/AGM of SITCO (first respondent)



d) Whether Telangana Housing Board is necessary to be impleaded as party to the present application.

11. So far as the first issue is concerned, it is not in dispute that the NCLT is having jurisdiction U/s 167 of Companies Act, 1956 to consider the relief as sought for subject to the condition that the applicant has made all bonafide efforts to convene Board Meeting/AGM but failed with no alternative except to approach this Tribunal for appropriate relief. In this Connection, the learned counsel for the Petitioner has rightly relied upon the decision rendered in the case of Taihan Electric Wire Co. Ltd Vs. TDT Copper Ltd, as cited above. The Hon'ble Tribunal by accepting the prayer of the applicant has directed inter alia to convene an Annual General Meeting. Every Share holder has a right to requisition even extraordinary General Meetings of a Company in which he hold his share(s). As held by the Hon'ble Supreme Court in the said Balakrishnan Vs/ Swadeshi Polysters Ltd, as per provisions of Companies Act, 1956, a Company or a body Corporate may also become a member. When once a person becomes a member, he is entitled to exercise all the rights of a member until he ceases to be a member in accordance with the provisions of the Act. In the present case, the applicant is a shareholder of SITCO possessing all rights of a Share-holder. So the Applicant can maintain the present application to seek the relief as prayed for.

The Hon'ble High Court of Madras in the case of S. Mohan Vs. The Commissioner and Management of the Muthialpet Benefit Fund Ltd and others



(2002(3) MLJ 723, 2002(4) LW 356 ) has upheld the decision of Company Law Board in holding that the Company Law Board is vested with necessary powers to give directions, which are consequential in relation to the holding of Annual General Meeting.

So far as second issue is concerned , the SITCO and the applicant jointly made efforts to conduct Board and Annual General Meetings as discussed above on 16.7.2004, 08.08.14: 28.09.14,30.09.14 and also persuaded the APHB by writing letters to co-operate with them for conducting Board Meetings/AGM of SITCO in the overall interest of both the parties. So we hold that the applicant is bonafide in its efforts to conduct the above meetings.

12. So far as the issue of not attending the Board meetings/AGM by the APHB is concerned, Since the APHB is holding 49 % share capital of the first respondent Company, it is equally responsible along with other major share Holder i.e the applicant herein, to participate in Board Meetings/AGM of SITCO. However, for the reasons best known to the APHB, it has avoided to attend the Board Meetings /AGM on one pretext or the other by citing un-justifiable issues like appointment of their own Auditors (Chadha &Co) to audit the SITCO from its inception by deviating the practice in force in the Company, several issues due to formation of the New State etc. So the second respondent is unjustified in not attending the meetings in question. Here, as stated above, there are only two share-holders holding 51% and 49% each by the applicant and the second Respondent respectively. So it



is inevitable for the both parties to conduct/convene the required meetings as per the Articles of Association of Respondent No.1 Company and in accordance with Provisions of Companies Act, 1956 and 2013. It is not in dispute that all the parties are bound by the provisions of Companies Act and they are expected to follow them scrupulously without any deviation.

13. So far as the issue for impleading the Telangana Housing Board is concerned, as per the GOs mentioned above, all the laws and action made by the previous State/Board are protected and the Telangana Housing Board is bound by the agreements made by the APHB with other parties. Moreover, the learned counsel for the Respondent No.2 has accepted the notice on behalf of the APHB and continues to defend the APHB and its actions. So the Telangana Housing Board is bound by the decisions of APHB and, it is mere technical issue for impleading it. Moreover, the GO.Ms No. 45(F) dated 1<sup>st</sup> June, 2016 was also already issued, which is known as Telangana Adaptation of Laws Order, 2016.

14. It is further to be noted that as per Section 164 and 167 of the Companies Act, 2013, if the Annual accounts of any company are not filed with the Registrar of Companies for a continuous period of 3 financial years, it would result in serious non-compliances of the Act leading to disqualification of the Directors and vacation of their office besides levy of penalties which include imprisonment. Since the Financial Statements for





the year 2011-12 were delayed by the Board and it affected the subsequent years as well.

It is also not in dispute that as per section 166 of Companies Act, 1956 and corresponding Section 96 of Companies Act, 2013 every company other than a one person Company is required to call at least one meeting of its shareholders each year. If a company fails to hold this meeting, any member of a company can apply to the Tribunal to call for the same. The Tribunal, under the powers conferred under Section 167 of Companies Act, 1956 and corresponding section 97 of the new Companies Act, 2013 can give any ancillary or consequential directions which it thinks expedient in relation to the calling and conduction of the meeting and the meeting conducted in pursuance of a direction of Tribunal shall be deemed to be an Annual General Meeting of the Company.

15. In the light of above discussion of the case, we allow the present application by excusing the default in holding 9<sup>th</sup> Annual General Meeting(AGM) and direct M/s Swarnandhra IJMII Integrated Township Development Company Private Limited (SITCO) to hold 9<sup>th</sup> AGM within 60 days from today , after duly serving statutory notice of 21 days to all the parties concerned , to receive, consider and adopt the audited accounts of the company for the period ended March, 31, 2012 and the reports of the Directors and Auditors thereon. The Telangana Housing Board, the successor Board of previous APHB is directed to depute its nominee Director(s) to the said proposed AGM of SITCO so as to fulfil the required



Quorum as per the Articles of Association and in accordance with law. The meeting shall be chaired by such person as provided in the relevant Articles of Association of the Company. We make it clear that the above directions are given in order to remove serious legal impediment coming in the way of running the Company without convening 9<sup>th</sup> AGM as discussed above, without the prejudice to the rights of all the parties. Parties are directed to bear their own costs.



Sd/-

**RAVIKUMAR DURAISAMY**  
**Member(Tech)**

Sd/-

**RAJESWARA RAO VITTANALA**  
**Member(Judl)**

*V. Annapoorna*  
**V. ANNA POORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD - 68

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