

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

C.A. No.73/97/HDB/2016

Date of order : 27.02.2017

BETWEEN

1. Dr.Subba Rao Pavuluri,
S/o Sivaramakrishnaiah Pavuluri
R/o Plot No.1355C, Road No.45,
Jubilee, Hills,
Hyderabad -500 033
Telangana State, India

.... Applicant

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

AND

1. Gagan Aerospace Limited,
Registered Office at Plot No.39,
Hi-Tech City, Phase-II, Madhapur,
Hyderabad, 500 081,
Telangana
Purportedly shifted to Plot No.31, Part-B,
3rd Floor, TIE, Balanagar,
Hyderabad – 500 037.
2. Rachakonda Siva Kumar,
S/o Rachakonda Sivaswamy Sastry,
R/o H.No.8-2-334/1/A,
205, Aditya Garden 1A, Road No.7, Jubilee Hills,
Hyderabad – 500 034,
Telangana
Also at H.No.8-2-293/1/G/A 202,
Aditya Elegance,
Road No.34, Jubilee Hills,
Hyderabad – 500 033
3. Rachakonda Ramadevi,
W/o R. Siva Kumar,
R/o H.No.8-2-334/1/A,
205, Aditya Garden 1A, Road No.7,
Banjara Hills, Hyderabad – 500 034
Telangana.
Also at H.No.8-2-293/1/G/A 202,
Aditya Elegance,
Road No.34, Jubilee Hills,



Hyderabad – 500 033

4. Mr. Koteswar Rao,
Partner, Ramasamy and Koteswar Rao & Co.
Chartered Accountants,
238/A, Road No.12, MLA Colony,
Banjara Hills,
Hyderabad – 500 034,
Telangana State.

... Respondents

Counsel for Applicant:

Sri Y. Suryanarayana

Counsel for Respondents No. 2 & 3:

Sri S. Chidambaram, PCS

Counsel for Respondent No. 4:

Sri Naresh Kumar Sangam

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. Heard Sri Y. Suryanarayana, learned counsel for the Applicant; Sri S. Chidambaram, learned PCS for Respondent No.2 & 3 and Sri Naresh Kumar Sangam, learned counsel for Respondent No.4.
2. The Company Application bearing No.73/97/HDB/2016, was filed by Dr. Subba Rao Pavuluri under section 97 of the Companies Act, 2013 R/w Rule 11 & 74 of NCLT Rules, 2016 , by inter alia seeking to ;
 - a) to appoint any Firm of Chartered Accountants as Statutory Auditors of the Company and to furnish their report to the shareholders for the years 2013-14, 2014-15 and 2015-16;
 - b) to direct the respondent No. 2 & 3 to extend un-conditional co-operation to the Respondent No. 1 and to the applicant in holding and conducting the AGM , to fix date, time and venue for holding Annual General Meetings for the year 2014-15 and 2015-16 ;

c) to appoint an Independent Advocate Commissioner as a Chairperson for conducting the AGM ; etc

3. The learned Counsel for the Petitioner submit that Gagan Aerospace (herein after referred to as Company) was initially incorporated as 'Gagan Aerospace Private Limited on 16.10.2008, and it subsequently it became a Public Limited Company w.e.f. 24.01.2012 and changed to the present name. The applicant is the promoter Director/Chairman and shareholder of the Company by holding 4790 equity shares of Rs. 10/each. The applicant and his group holding 50 % of the total paid up capital of the Company. The Respondent No. 2 & 3 hold 50% of the total paid up capital.

The learned counsel for the Petitioner has mentioned several instances of alleged malicious and unlawful acts of Respondent No.2 with oblique motives and malicious intentions tried to thwart every effort of the Applicant to get the accounts audited by the statutory auditors etc., It is also stated that the AGM of the Company could not be held within the statutory period owing to irresponsible and non-cooperation attitude of the Respondents. He also stated that several acts of omission and commission are on the part of the Respondent in auditing the accounts, conducting of meetings etc.



4. Sri S. Chidambaram, learned PCS for the Respondent No.2 & 3 has filed a counter dated 23.11.16 by raising several preliminary objections about the maintainability of application. . The learned PCS submitted that the 2nd respondent is the present chairman of the Company since 18.06.2015. The petitioner was appointed as Chairman in the first Board meeting held on 16.10.2008 and his appointment was subject otherwise decided by the Board of Directors. In Board meeting held on 18.06.2015, the Respondent No. 2 was appointed. He has denied all the averments made on behalf of the Petitioner. He has also made several counter allegations with regard to the averments made by the Petitioner. He has also made

allegation that the petitioner systematically destroyed the Company by diverting its business contract to his front companies and thorough mismanaging the affairs of the R1 Company by sheer abuse of law. The present petition was filed with an intention to camouflage his misdeeds and attempting to get legitimacy for his illegal acts.

However, the learned PCS submitted that without going into the merits of case, the Tribunal can appoint an independent Chairman for the company, but having no voting rights to chair the Board and AGM, and the appointed Chairman can be directed to give access to the Respondents no. 2 & 3 about the statutory records, books of accounts etc.

5. Sri Naresh Kumar Sangam, the learned counsel for the R.4 has filed a reply dated 23.11.2016 by contravening various allegations raised by the petitioner with reference to him. He has categorically denied that Respondent No. 4 was acting for and on behalf of Respondent No. 2. . The Company is not all extending co-operation to him to discharge his statutory duties.

The learned counsel also submit that the Company has not paid the Respondent any amount for the services rendered by his client to the Company. He, therefore, requests suitable direction can be given to the Company to make payment for the services rendered. The learned counsel is right in asking for the payment of fee for the service rendered to the Company and the Company is liable to pay him the fee as per his entitlement. The Respondent No. 4 is permitted to place his request before Chairperson during Board/AGM for taking appropriate decision as regards to payment of fee.



6. We have considered all the contentions raised by all the parties, and we are of the considered view that the present application can be disposed of without going into the merits of the case. Hence, we dispose of CA No. 73/97/HDB/2016 with the following directions;;

- i) We hereby appoint Sri T. Hanumantha Reddy, Advocate & Senior Panel Counsel for Central Govt. & Railway Panel Advocate in CAT/HYD, H. No. 6-1-72, Sri Maha Laxmi Meadows, A-1501, Lakdikapool, Hyderabad-4 , as Chair Person to conduct Board Meetings and Annual General Meetings for the year 2014-15 and 2015-16 of Gagan Aerospace Limited;
- ii) We hereby appoint Seshachalam & Co., Chartered Accountants, "Wall Street Plaza", 1-11-256, ICICI Building, St. No.1, Begumpet, Hyderabad – 16,(Contact Person: Mr.K.Goutham) as Auditor in the present case and his fee will be decided in consultation with the Chairperson.
- iii) The Learned Chair person is directed to fix dates and venues suitably, after discussing the issue with the petitioner and the Respondent No. 2 & 3 and give advance notices to all the concerned parties;
- iv) The Petitioner as well as the Respondent No. 2,3 & 4 are directed to extend full co-operation to the Learned Chairperson and Auditor to discharge their duties;
- v) The learned Chair person is also directed to take all relevant records and make available those records to the Respondent No. 2 & 3;
- vi) The Learned Chairperson's fee is fixed at for Rs,. 25,000/- for Board Meetings and Rs.50000/- to Annual General meetings which is to be borne by Respondent No.1 Company apart from other expenses;
- vii) We direct the Auditor to take up auditing of all the records.
- viii) We direct the Petitioner and the Respondents to make available all the records as required by the said Auditor as and when called for.



- ix) The Petitioner as well Respondents are entitled to have an access on records obtained by the auditor and also the auditor is directed to furnish the copies as requested by the parties if the copies are few in pages. If they are in voluminous the parties are entitled to inspect those documents.
- x) The Learned Chairman and Auditor are directed to complete the above exercise within a maximum period of three months from the date of receipt copy of this order;
- xi) Both the Chairperson and Auditor are entitled to take any professional service/assistance required by them depending on the nature of their assignment; and they have to minute record all the proceedings and furnish copies to both the parties;
- xii) Both the Learned chair person and Auditor should make all efforts to settle the issue amicably;
- xiii) The Respondent No.4 is also directed to co-operate with the newly appointed Auditor, if any services are required by the C.A.
- xiv) The Registry of NCLT is directed to forward a copy of this Order to the Learned Chairperson and Auditor.

7. With the above directions, CA No. 73/97/HDB/2016 is disposed of by granting liberty to file fresh application.



Sd/-

RAVIKUMAR DURAISAMY
MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (J)

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