

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. No. 15/2016

Present: Ms. Manorama Kumari
Hon'ble Member (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 25th October, 2016, 10.30
A.M

Name of the Company		Shankar Sharma & Ors. -Versus- Asta Nursing Home Pvt. Ltd. & Ors.	
Under Section		241/242	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

- 1) Mr Abhrajit Mitra, Sr. Advocate
- 2) Mr D.N Sharma, Advocate
- 3) Mr Sidhartha Sharma, Adv
- 4) Ms Namrati Basu, Adv

[Signature]
25.10.2016
- For Petitioners

- 1. Mr. Sivanath Dey, Advocate } For Respondent
- 2. Mr J. Patnaik, P.C.S. } NO. 1.
- 3. Mr. A. Roy, Adv.

[Signature]
25/10/2016

Respondents (16 & 17).

- 1. Mr Parita Pawan Biswal (AOR)
- 2. Mrs. Priyanka S Tiwari (Advocate)

[Signature]
25/10/2016

Date : 25th October, 2016

CP No. 15/2016

ORDER

The Ld. Lawyers on behalf of the petitioner(s) and respondent (s) No. 1, 16 and 17 are present.

The Company Petition No.15 is filed on 24.10.2016 (yesterday) and the same is moved today.

One Caveat has also been filed on behalf of Respondent No. 1.

The copy of the Company Petition has been served to Respondent No. 1 today.

The Ld. Lawyer on behalf of the respondent No.1, Company filed Vakalatnama in the Court during the course of hearing which is said to have been authorized by Mr. Amitabh Ghosh pursuant to the minutes dated 01.10.2016.

Let the Vakalatnama along with minutes dated 01.10.2016 be kept in safe custody.

Mr. Amitabh Ghosh is directed to be present in the Tribunal on the next date of hearing so as to verify the Vakalatnama.

Heard both side at length.

Akshay

The petitioner No. 1 submitted that he is the founder Director of the company and also a subscriber to the Memorandum of Association and the Articles of Association of the Company.

The petitioner No. 1 is also a share holder of the Company. He submitted that he holds the share which constitute 6.37% and petitioner No.2 holds 9.61%, petitioner No. 3 holds 28.85% and the petitioner No. 4 is having 4.81% totalling to 49.64%. Hence, the petitioners are holding the eligibility criteria to file this Company petition.

The main contention of the petitioners is that the respondent issued a notice for holding the Extra ordinary General meeting on 26-10-2016 and the notice has been received by them.

The explanatory statement pursuant to the provisions of Section 102 of the Companies Act, 2013 is annexed at page No.323. The said explanatory statement set out the matters for the consideration of which the Extraordinary General meeting is to be called.

Atinani

The petitioner(s) submitted that the matters set in the explanatory statement reflect certain allegations against the petitioner, Mr. Shankar Sharma, Respondent No. 16 and Respondent No. 17 and in view of the allegations, he along with Respondent No. 16 and Respondent No. 17 may be removed from the Directorship of the Company. Hence, he has prayed for interim order in the form of an injunction against holding of extraordinary general meeting to be held on 26-10-2016 as, if he would be removed being the founder Director of the Company and also the subscriber of the Memorandum of Association and the Articles of Association, then it will cause immense loss to him which cannot be compensated in terms of money.

The Ld. Lawyer, present on behalf of respondent(s) No. 16 and 17 also conceded to the prayers made by the petitioner(s).

On the other hand, the respondent No. 1 submitted that they have filed one Company petition being CP No. 115 of 2013 which was dismissed on 9th May, 2016 and being aggrieved with the order passed by the erstwhile company Law Board, they have preferred an appeal and the said appeal was allowed with the following observation

Chakraborty

" the Company Law Board although held that removal of petitioners No. 1 to 8 (now the respondents) as Directors under Section 284 of the Act was done in contravention of the provisions of the Companies Act, 1956 and also against the principle of legitimate expectation, dismissed the Company petition. The allotment is also in violation of Article 6B of the Articles of Association.

In view thereof, the appeal succeeds. The Board resolution dated May 31, 2013 and consequent allotment of shares in favour of the respondents No. 3 & 4 are set aside. The judgment dated May 09, 2016 is set aside."

The above said observation of the Hon'ble High Court clearly states that the judgment passed by the then Company Law Board was set aside in toto which itself shows that the original position of the respondents in the instant petition are restored and in view of the above fact, the respondents submitted that they have called for the Extraordinary general meeting after conducting the Board meeting held on 1st October, 2016 and the notice of the Board

Abhinav

meeting has duly been served upon the petitioners to which the Ld. Lawyer of the petitioner also admitted.

The respondent(s) further submitted that the petitioner has not attended the Board meeting dated 1st October, 2016 even after having full knowledge.

In reply, the petitioner No. 1 submitted that in view of the resolution dated 14th May, 2016, taken after the dismissal of the Company petition No. 115/2013, Dr. Vinay Kumar was removed and he being the signatory of the notice dated 27th September, 2016 of the Board meeting, the petitioner has not attended the Board meeting but they have failed to show and/or annex any documents with regard to the resolution dated 14th May, 2016 showing that Dr. Vinay Kumar was removed as Director of the Company, save and except Form 32 as annexed in the petition.

I have gone through the documents and submissions made by both side and also gone through the allegations levelled in the Company petition against the respondents and heard the arguments advanced by both the side.

Adnan

On perusal of the records, it is found that the petitioner has also failed to submit the balance sheet for the year 2014-2015 as of now. On the other hand, the respondents submitted that since the Company is in the control of the petitioners, they are supposed to submit the balance sheet in time but they have failed to do so and after allowing of the appeal by the Hon'ble High Court on 14th September, 2016, setting aside the judgment of the then Company Law Board dated 9th May, 2016, the respondents propose to file the balance sheet and also proposed to convene the EoGM for smooth running of the Company.

The Ld. Lawyer on behalf of respondent No. 1, company submitted that since they have received the copy today, they need some time to file their reply so that they could bring the clear picture of the conduct of petitioner(s).

Considering the pleading, the documents, arguments of the Ld. Lawyers and the legal position as applied in the facts and circumstances of the case, I find that the petitioner(s) has not been able to controvert the contentions of the respondent(s) and there is no prima facie case so as to pass any order of status quo in favour of the petitioners in view of the Hon'ble High Court's order dated

Chaturvedi

14th September, 2016. More so, if any injunction is granted in the form of restrain order, then the total function of the Company will come to stand still.

However, as this Court is for equity and considering the equities between the parties, I find that if the Extraordinary general meeting is allowed to be held tomorrow, i.e. on 26th October, 2016 without giving any opportunity of hearing to all the respondents, then the respondents will succeed in his evil design to remove the petitioner(s) from the Company in connivance with other respondent(s) which may on the other hand cause irreparable loss to the petitioner(s), being the founder Director of the Company and there will be multiplicity of cases.

Hence, to come to the just finding, it is hereby directed to defer the Extraordinary general meeting of the Company going to be held/convene on 26th October, 2016 till further order and notice be issued to the remaining respondents as to why injunction as prayed for by the petitioner(s), would not be granted against the respondent(s).

Abhinav

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Two weeks' time is allowed to file reply by the Respondents and one week's time is allowed to file rejoinder, if any, as prayed for.

Fix the matter for order on 07-12-2016 for further hearing.

MANORAMA KUMARI
MEMBER(J)