

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.A.No. 190/2016

In

C.P.No. 145 of 2013

CORAM:Shri V.P.Singh
Hon'ble Member(J)
S. Vijayaraghavan
Hon'ble Member(T)

In the matter of the Companies Act, 1956 : Sections 111, 111A, 235, 237, 398,
402 and 406A

And

IN the matter of :Tirumala Infrabuild Pvt. Ltd. & Ors.

.....Petitioners

Versus

M/s. Idio Construction & Industries Ltd. & Ors.

.....Respondents

Parties on Record:

Mr. Rajeev Ranjan Prasad, Advocate]
Mr. Surendra Kumar, Advocate]
MR. Nilanjan Chatterjee, Advocate]

For the Petitioners

Mr. Patita Paban Bishwal, Advocate]
Mr. Kuldip Mullick, Advocate]
Ms. Urmila Chakraborty]

For Respondent Nos. 1, 2 & 5

Mr. Abhishek Kumar Pandey]

For new management of
Respondent No. 1 Company

Order was dictated by Hon'ble Member (J) Shri V. P. SINGH

ORDER

(Date of hearing : 11/08/2016)

In this application we are considering the Company Application being

CA No. 190/2016 filed by the respondents no. 1, 2 and 5 filed by Tirumala

Infrabuild Pvt. Ltd. & others. The applicants filed this application, being C.A.No. 190/2016 ,with a prayer that the Extra Ordinary General Meeting and Board Resolutions passed in the purported meeting said to have been held on 21/09/2015 be declared as null and void.

Further the applicants prayed that name of Mr. Manoj Kumar Chaudhury as a Managing Director, Mr. Nirjan Kumar Maurya, Director and Mr. Rajesh Kumar Ranjan, Director be deleted from the list of the MCA Portal and direction be issued to the Registrar of Companies for deleting their names.

The applicants have also prayed that the purported resolutions passed at the Board Meeting which was held in contravention of the then Company Law Board's order dated 11/07/2013 be declared as null and void.

M/s. Idio Constructions & Industries (India) Ltd is a public limited company incorporated on 10th February 1992 having its registered office at Ramswarup Prasad Singh, C/o. Late Ambika Prasad Singh, Near Brahmaasthan Mandir, Dariyapur, Gola Road, Patna Bihar 800004.

The Company, as per the last Annual Return filed by the respondent no. 2 have a total number of valid 119 shareholders and the petitioners

comprised a total number of 20 shareholders having 58,069 fully paid up shares out of 1,00,000 numbers of valid authorised, issued and subscribed shares of Rs.100/- each.

As per the averments made by the petitioners the valid authorised share capital of the respondent no. 1 company is Rs. 1 Crore, divided into 1,00,000 equity shares of Rs. 100/- each and the valid issued, subscribed and paid up share capital of the company is also Rs. 1 Crore.

In this case on the basis of application of petitioners interim order was passed on 11th July, 2013 by CLB directing for maintaining the status quo as regards to the share capital of the respondent no. 1 company and the constitution of the Board of Directors of the Company. In addition, it was also directed that respondent no.1 company will not alienate the fixed assets of the Company and all these orders are in force till date.

The petitioners alleged that inspite of interim order of the CLB, respondent no. 2 had received the purported notice dated 4th September, 2015 on 7th September, 2015 for calling of an Extra Ordinary General Meeting of the Company on 21st September, 2015 from persons claiming to be shareholders of the Company.

In December, 2015 the respondent nos. 2, 3, 4 and 5 came to know that their names has been removed as directors by the respondent No. 1 and three outsiders, namely, Mr. Manoj Kumar Chaudhury as Managing Director, Niranjana Kumar Maurya as Director and Mr. Rajesh Kumar Rajan as Director have been appointed of the respondent No. 1 company.

The applicant has alleged that the above mentioned action of removing the names of 4 directors from the list of Board of Directors and induction of new Directors is in violation of the order passed by the then Company Law Board.

The applicant has further alleged that there was an order of the Company Law Board dated 11/07/2013 to maintain the status quo as regards the constitution of Board of Directors of the Company and is still subsisting. The applicants state that the people who have signed the notice are not authorised to call the Extra Ordinary General Meeting of the Company as they are neither the shareholders nor the Directors of the Company. Proper notice as is required under rules of the Companies Act, 1956 have not been complied with, as proper notice of the agenda and explanatory statement has not been received by the applicants. As such the resolutions passed in the

purported Extra Ordinary General Meeting held on 21/09/2015 are illegal, null and void ab initio and in violation of the provisions of the Companies Act.

On the above basis the petitioners have further alleged that the names of Mr. Manoj Kumar Chaudhury as Managing Director, Niranjana Kumar Maurya as Director and Mr. Rajesh Kumar Rajan as Director ought not to be included in the MCA Portal and names of respondent nos. 2, 3, 4 and 5 could not have been removed in view of the order of the then the CLB.

The petitioner has prayed that unless the orders are set aside the applicants and all the shareholders, creditors, financial institutions and employees shall be gravely prejudiced.

The balance of convenience and the prima facie case are in their favour and It was further submitted that the petitioners would not suffer any prejudice as recognizable in law, equity and good conscience , if orders are passed as prayed for herein.

The petitioner has filed a reply wherein Sri Rajnikant Kumar (R-2) has alleged that he has also preferred a Company Application inter alia praying for impleading the alleged newly added Directors as party respondents and after

hearing them set aside the resolution dated 21/09/2015 and be pleased to declare the constitution of the Board during the pendency of the Company Petition before CLB as illegal and inoperative and the resolution, if any, passed by the said Board be declared as illegal and in contravention of the orders of the then Hon'ble Company Law Board passed on 11/07/2013. The petitioner has also alleged that during the pendency of the application the Board of Directors be restrained from holding any Board Meeting and any resolution passed by newly constituted Board need not be given effect to.

As per petitioner's averment he has no reason to oppose the instant Company Application under reply since in sum and substance the stand of the petitioner with respect to constitution of new Board is the same as of the respondent (R-2).

Heard the Ld. Counsel of the parties at the time of oral arguments. The petitioner has also agreed with the fact that the purported notice dated 4th September 2015 for calling Extra Ordinary General Meeting and subsequent resolution of the Extra Ordinary General Meeting was not in consonance with the direction issued by the then Company Law Board dated 11/07/2013. As per direction of the CLB status quo was to be maintained regarding the share

capital of the company and the constitution of the Board of Directors of the Company.

On perusal of the records it is evident that there were specific directions of the Company Law Board for maintaining the status quo of the share capital of the respondent no. 1 company and constitution of Board of Directors of the Company. But in violation of that a notice for Extra Ordinary General Meeting was given and Extra Ordinary General Meeting has been purportedly held on 21/09/2015 whereby names of respondent nos. 2, 3, 4 and 5 have been removed from the Board of Directors and names of Mr. Manoj Kumar Chaudhury as Managing Director, Niranjana Kumar Maurya as Director and Mr. Rajesh Kumar Rajan as Director have been added thereby status quo position which ought to be maintained as per the direction of the then Company Law Board has been violated.

The Application deserves to be allowed and the resolutions passed at the Extra Ordinary General Meeting dated 21/09/2015 also deserve to be declared as null and void. Consequently, the names of Mr. Manoj Kumar Chaudhury as Managing Director, Niranjana Kumar Maurya as Director and Mr. Rajesh Kumar Rajan as Director of the Respondent No. 1 company should be deleted from the MCA portal and the names of the Respondent Nos. 2, 3, 4


and 5 as the Directors of Respondent No.1 Company deserves to be restored in the MCA Portal.



Hence, the application of respondent nos. 1, 2 and 5, being C.A.No. 190 of 2016, is also hereby allowed. SV

Let a copy of the order be sent to Registrar of Companies for taking necessary action.

Place : KOLKATA

Dated, the 16th day of August, 2016


S Vijayaraghavan
Member(T)



V P Singh
Member(J)