

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

38 A

C.P No. 465/(MAH)/2017

CORAM:

Present:

SHRI B. S.V. PRAKASH KUMAR
MEMBER (J)

SHRI V. NALLASENAPATHY
MEMBER (T)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.11.2017

NAME OF THE PARTIES: Dalip Singh Tuli & Ors.
V/s.
Tuli Hotels Pvt.Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 397/398 of the Companies Act 1956
and 241/242 of the Companies Act, 2013.

S. No. NAME DESIGNATION SIGNATURE

for Resp. 2
1) Adv. Amit Tamhankar Advocate
2) Ritesh Mahajan PCS.
3) Pankaj Dhamne PCS.
4) Pinkush Jaiswal PCS.
5) Sadhana Tamhankar CS.
6) Anueng Vyas PCS.

for
Resp. No. 2

Dalil
Mahajan
Dhamne
Jaiswal

1) Adv. Prathmesh Kamat
2) Adv. Gautam Bhakkar
3) Adv. Roshan Pinto
4) Adv. Vikram Kamat
5) Adv. Pindar Bhagwad

Adv. for the
Petitioners

Prathmesh Kamat

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ORDER

CP No. 465/241-242/NCLT/MB/MAH/2017

By looking at the intricacies involved in this case, this Bench needs time to decide this application moved by the petitioners' side seeking stay of the EGM to be held on 12th November 2017. Owing to paucity of time, this Bench is unable to dispose of this application immediately, as to interim direction, we wish to place these facts.

In the Company Petition the petitioners filed, it appears that the Petitioner's side directors were in fact disqualified under section 164 (2) of the Companies Act, 2013, they have only 34% shareholding in the Company, when the Respondents side had wanted to hold EGM for appointment of additional directors, these Petitioner had come before this Bench and obtained stay order in respect to the EOGM scheduled to be held, that time, the Respondents side not present at the time of granting that stay order.

Subsequent to obtaining the order aforesaid, it is apparent that this Petitioner went and pleaded before the Hon'ble High Court of Bombay, Nagpur Bench for their continuation as directors by challenging their disqualification under 164 (2) of the Act, and obtained an order for continuation of those directors who are shown as disqualified to continue as directors in the Company stating that their removal is non-est.

Now the fact of the matter is, the Petitioners' side who have only 34% of the shareholding continue with 3 directors on the Board, whereas majority shareholders have only one director on the Board, which is democratically not permissible to happen, and it is virtually permitting minority to take a call on the affairs of the company. In view of this, this matter is posted for hearing as fixed earlier.

The Petitioners counsel argues that these Respondents having taken a decision to hold EGM under Section 174(2) of Companies Act, 2013, it is illegal to hold such meeting when already three directors are present on the Board from the petitioners' side. For which we make it clear that jurisdiction under 241 & 242 of the Act is extraordinary jurisdiction to interfere if prejudice or unfairness indulged in dealing with the affairs of the company, not qua on illegality of any action in respect to the affairs of the company. If it is on allegation of simpliciter illegality, jurisdiction lies somewhere not before this forum.

However, this MA will be heard on merits on the next date of hearing.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)