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NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

T.C.P No. 84/(MAH)/2009
M.A. No. 326/2017

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 12.09.2017

NAME OF THE PARTIES: Dushyant Patel & Anr.
V/s.
Aakash Lavlesh Leisure Pvt. Ltd.

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
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Rishabh Shah
Shirin Shaikh
i/b Raval Shah
& co

} Advocates
for Respondent
No. 3, 5 to 6

Mr. Adul Singh
a/w Adv. Vedant Desai
a/w Adv. Ratnares Singh
i/b AVS Legal

} Advocates
for Respondent
No. 2 Applicant

MR. RAHUL CHITNIS ADVOCATE
MR. MAHENDRA BUTA PLS
i/b MR. DHARMESH SHAVERI PLS

for VETTERWEBS

ORDER

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ORDER

MA 326/2017 IN TCP No. 84/397-398/NCLT/MB/MAH/2009

The counsel appearing on behalf of R3-6 filed an affidavit along with an Arbitration Award dated 9th September 2017 reflecting a direction against R2 and his wife to call Extraordinary General Meeting of R1 company to pass appropriate resolution for adopting the subject agreement and making the same as part of the Memorandum & Articles of Association within 4 weeks from the date of this Award, consequent to it, to amend the Articles of R1 Company in pursuant to a Resolution dated 28th March 2017.

Over which the petitioner counsel as well as R2 counsel submits that the shareholders' Agreement in between R2 group and R3 Group has nothing to do with R1 Company and R1 not even being made as party to the Shareholders Agreement constituted of Arbitration clause, no action should be taken in respect to the affairs of the company, whose affairs are in dispute before this Bench u/s 397 & 398 of Companies Act 1956. This Company Petition has been filed in the year 2009, whereas this Arbitration proceeding was initiated in the year 2012 basing on an agreement entered into on 22 November 2006.

On looking at this Award dated 19th September 2017 passed on an Arbitration clause entered between R2 group and R3 group, it is evident that R1 Company has not been made as party either to the Arbitration Agreement or in the Arbitration proceedings, and this Arbitration Proceeding was initiated while 397-398 proceeding pending before this Bench.

Since R1 Company affairs are in seisin of this Bench, we are of the opinion that the award passed by the Arbitrator will not be binding either on the petitioner or on this Bench or even on R1 Company, who is not a party to the Arbitration Proceeding, therefore, R2 and/or R3 shall not unilaterally hold any extraordinary general meeting ignoring the interest of any of the shareholders of R1 Company until further orders.

On the affidavit filed by R3-6, remaining parties are directed to file reply, if any, within one week and rejoinder, if any within one week thereafter.

List this matter for final hearing on **11.10.2017**.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

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