

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

C.A.No. 138 of 2008

In

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

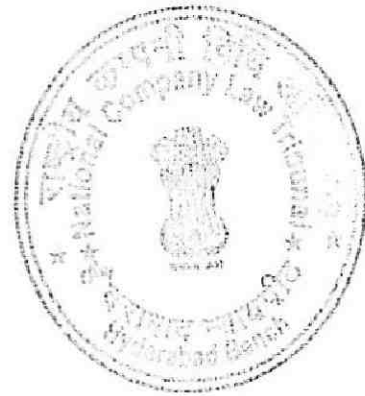
CP No. 56/2002

(TP No. 163/HDB/2016)

Date of Order: 18.11.2016

Between:

1. Vijayawada Share Brokers Limited
A company incorporated under the
Companies Act, 1956 having its
Registered Office at 31-10-22A
Malaria Office Street, Machavaram,
Vijayawada -520004, rep. by its
Managing Director
Mr. L Nagabhushanam
2. Mr. L. Nagabhushanam
S/o Venkateswara Rao, 57 years
Residing at Door No. 31-10-22A
Malaria Office Street, Machavaram
Vijayawada – 520004, Krishna Dist., AP
3. Mr. Suresh Tatiya
S/o MilapchandTatiya, 56 years
Door No. 11-31-100, 1st Floor
Park Road
Vijayawada – 520001
Krishna Dist, Andhra Pradesh
4. Mrs. K.L. Prashanthi
W/o Mr. K. Vishnuvardhan
28 years, residing at
Door No. 31-10-22A
Malaria Office Street, Machavaram
Vijayawada – 520004, Krishna Dist., A.P



5. Mr. L.A. Prasad
S/o Venkateswara Rao, 59 years
Door No. 8/310-D, 7th Line
Rajendra Nagar
Gudivada, Krishna Dist
Applicants/Respondents

And

1. Mr. D. Ramakishore
S/o D Janardhan Rao, 41 years
Business, R/o B-7
VenkataBalaji Towers
Mogalrajpuram
Vijayawada – 520010
2. Mr. P Surendra Kumar
S/o Janardhana Rao,
47 years, Business,
C/o. Balajee Chemical Supplies
54-7-41, 3rd Road, 4th Cross
Autonagar
Vijayawada – 520007
3. Mr. K Venkateswara Rao
S/o K. VidyaSagar, 42 years
Business, R/o 26-12-18, 2nd Floor
Boddapativari Street
Near Shailja Theatre
Gandhi Nagar
Vijayawada – 520003
4. Mr. D. Janardhan Rao
S/o D Hanumantha Rao, 66 years
Business, R/o TF-8
Venkat Enclave
Opp. Tagore Rice Mill
Tikkel Road
Vijayawada – 520010

5. Mr. G C S Murthy, S/o Jagga Rao
56 years, Business
R/o 33-11-21, Netaji Street
Seetharampuram
Vijayawada
6. Mr. CH. Rajagopal
S/o Vasudeva Murthy
51 years, Business
2nd Line, Bavajipeta
Vijayawada – 520003
7. Mr. A. Vijaya Bhaskar
S/o A. Narayana Murthy
28 years, Service
C/o Y. Nagesh, D No. 29-7-48
Vishnu Vardhana Rao Street
Suryaraopeta
Vijayawada – 520002
8. Mr. T Sreenivas
S/o Late T H Babu Rao
43 years, Profession
R/o No.4, SIRI Apartments
Green Lands Hotel Road
Brindavan Colony
Vijayawada – 520010
9. Mr. D Mukteshwar
S/o D Janardhan Rao, 36 years
R/o S-2 Rampriya Residency
Siddartha Public School Back Gate
Lakshmi Nagar
Vijayawada – 520010
10. Mr. Mara Ram Nars
S/o M Hanumanth Prasad, 42 years
Business, 11-15-14/B
VinnakotaVari Street
Vijayawada – 520001

11. Mr. MVK Haragopal ✓
S/o Chakrapani
41 years, Business, 11-25-37
KT Road, Venkata Satya Sai Complex
Vijayawada – 520001
12. Mr. Allagadda Kiran Kumar ✓
S/o Venkateswara Rao
45 years, Business
6-5-73, 5/2 Arundelpet
Guntur
13. Mr. P Koteswara Rao ✓
S/o PV Raghavaiah
44 years, Business, 59A-8/10-9A
Maruthi Co-op. Colony, Patamata
Vijayawada – 520006
14. Mr T Naga Kumar
T Mangapathi Rao, 42 years
Business, Happy Dresses ✓
Main Road
Vijayawada – 520001
15. Mr. Konijeti Suresh ✓
S/o Kannaiah, 43 years, Business
11-9-4, MajjiVari Street
Vijayawada – 520001
16. Mr. T Ratna Srinivas ✓
S/o T.V. Hanumantha Rao
45 years, Business
27-33-6 GudavalliVari Street
Vijayawada – 520002
17. Mr. B Sainarayana ✓
S/o GSN Murthy
16-4-417/1, Fort Road
Besides DCMS Godown
Warangal

18. Mr K Prakash

S/o Venkateswarlu

42 years, Business

Main Road, Ponnur

Guntur District

19. Mr. G V N Satish Kumar

S/o G V Subba Rao, 37 years

Business, Brahmin Street

Ponnur, Guntur District

20. Mrs K L Uma

W/o Vasudeva Kumar, 48 years

House Wife, 27-43/2

Governoepet, Mandapati Street

Vijayawada- 520002

21. Mr. Damodar Rathi

S/o SatyanarayanRathi

47 years, Business

11-56-4, Marwadi Temple Street

Vijayawada 520001

22. Hukumchand Jaju

S/o BaukantlalJaju

Business, Age 56 years

D. No. 3-3-170

Kthibiguda

Hyderabad – 27

..... Respondents/Petitioners

23. Mr. C. Koti Ravikiran

Door No. 62-2-23

Opp. Ramalayam

Patamatalanka

Vijayawada – 520014

24. Mrs. A Prasanna

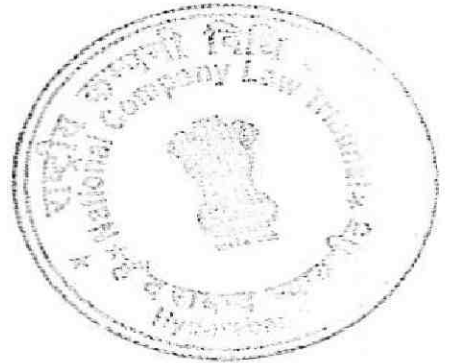
W/o Satyanaraya

39 years, Business

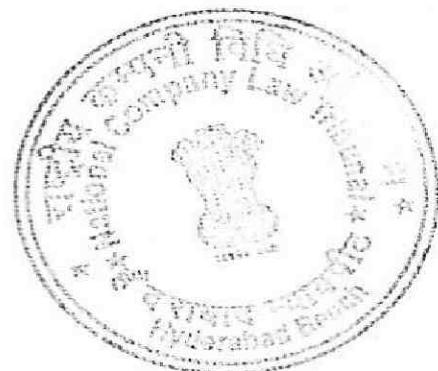
R/o. Krishna Residency

KPHB Colony, Kukatpally

Hyderabad



25. Mrs L Vijaya Lakshmi Devi
W/o L Nagabhushanam ✓
47 years, Business
R/o 31-10-22A
Machavaram
Vijayawada 4, Krishna District
26. Mr L Pandu Ranga Rao ✓
S/o Sundara Ramaiah
70 years, Business
R/o Tikkel Road
Vijayawada – 10, Krishna District
27. Mrs L S Prasunamba ✓
W/o Pandu Ranga Rao
67 years, Business
R/o Tikkel Road, Vijayawada 10
Krishna District
28. Mr. K Vishnu Vardhan ✓
S/o Madhusdhana Rao
30 years, Business
R/o 31-10-22A
Machavaram, Vijayawada 4
Krishna District
29. Mr. K Venkateswara Rao ✓
S/o Kutumba Rao
45 years, Business
R/o Yanamalakuduru
Vijayawada Rural
Krishna District
30. Mr. K V Suresh Kumar ✓
S/o Radhakrishna Murthy
46 years, Business
R/o 26-14-243
Near Sivalayam
Bhavanipuram
Vijayawada 12
Krishna District



31. Mr. M Lakshmi Sai Prasad
S/o Nagabhushanam
Old SBI Colony, Mangalagiri
Guntur District

32. Mr. Y RamanaSwamy
S/o Pandu Ranga Rao
Bhagya Laxmi Jewelry Mark
Sharaf Bazar
Tenali
Guntur District

33. Mr. B Madhusudhana Reddy
S/o Seethareddy
Pydaiah Street
Labbipet
Vijayawada
Krishna District

34. Ch. Gandhi Raja
S/o Mallikharjuna Rao
Near: Head Post Office
Eluru, West Godavari District

35. Mr K Srinivas
S/o Anjaneyulu
Opp. FCI Labbipet
Vijayawada
Krishna District

36. Mrs. C Hemalatha
W/o Gopi
Vellala Street
Plot No. 37
Purasawakkam
Chennai

37. Mr. Sourabh Malhotra
S/o Naresh Chandra Malhotra
Sri Venkateswara Hill Colony
Road No. 3

Banjara Hills
Hyderabad 43

38. Mr K V Nayak
S/o K G Nayak
26-13-595/55 Padmavati Nagar
Hyderabad 4

39. Mr P Ramachandra Murthy
S/o P V N Sharma
29-3-5/1 Opp. Abhinava Hotel
Vijayawada 2

40. Mr. Siva Kumar Agarwal
S/o Roop Chand Agarwal
Plot No. 444, 4th Floor, Indira Towers
Bandar Road
Vijayawada, Krishna District

41. Mr K A V Subba Rao
S/o Krishna Murthy
Patnam Bazar, Guntur
Guntur District

42. Mr. Namburi Sekhar
S/o Nageswara Rao
Sai Anna B-24, DD Colony
Bagh Amberpet
Hyderabad 13

43. Mr S N Malleswara Rao
S/o S G K Murthy
4-2-297 Sultan Bazar, Hyderabad

44. Mrs. Sarada Singhal
W/o Shiva Kumar Singhal
35-140/8, Fathenagar
Hyderabad 18

45. Mr. G Eswar
S/o Ramalingam
16-31-1186/A, Raj Bhavan Road

Somajiguda, Hyderabad

46. Mr. K Madan Mohan
S/o Padmanabha Sastry
106 Kakatiya Apartment
Street No. 2, Habsiguda
Hyderabad 7
47. Mr T Subba Rao
S/o Visweswara Ramam
6-3-596/63/8/3
Padmavati Nagar
Erramazil
Hyderabad
48. K Vasundhara
W/o Nagasudhakara Rao
1st Floor, Block No.4
Venkateswara Building
Patamata
Vijayawada – 520006
49. T. Sushree
C/o A. Hareram
501, Vijayasree Sai Allyssium
Margadarsi Colony
Kothapet
Hyderabad
50. N. Kiranpriya
C/o A V D Ramesh
Sri Harsha Share Consultants
29-19-14, Dornakal Road
Suryaraopet
Vijayawada – 520002
51. Meerasoni
W/o Nandkishore Soni
D 12, Industrial Estate
Vijayawada – 520007



52. T Anil Kumar
S/o Venkata Subbarao
Mogalrajpuram
Vijayawada, Krishna District

53. N Sivaprasad
S/o Late Lakshmi Narasimha Murthy
Kamakotinagar
Vidhyadharapuram
Vijayawada – 12

.. Respondents/third Parties

Counsel for the Petitioners:

Sh. SVS Chowdary

Counsel for the Respondents 1 to 22:

Sh. VS Raju

Counsel for Respondent No.23:

Sh. V Hariharan

Sh. Abhishek Dash

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)



ORDER

(As per Rajeswara Rao Vittanala, Member (J))

1. The Company Petition No. 56 of 2002 was initially filed before the Hon'ble Company Law Board, Chennai u/s 397 and 398 of the Companies Act, 1956. After considering the case, the Hon'ble CLB disposed of CP 56 of 2002 by an order dated 10th November 2006, by appointing a Chairman to carry out directions given in the order. Pursuant to the above order, the Vijayawada Share Brokers Ltd along

with 4 other Respondents of CP has filed the present CA No.138 of 2008 by seeking some directions. This CA thus was forwarded to this Bench, upon constitution of NCLT bench at Hyderabad for the cases belonging to the States of Andhra Pradesh and Telangana, to decide it. Hence, we have taken this CA on the records of this Bench.

2. The brief facts, which leads to filing of present CA No. 138 of 2008 (which is referred to as 'Application' herein under for brevity) are as follows:

a. The Company Petition (CP 56 of 2002) (which is referred to as 'Petition' herein under for brevity) was filed by 22 Petitioners, under Section 397 and 398 of the Companies Act, 1956 by interalia seeking to supersede the Board of Directors and to appoint an Administrator to take charge of the affairs of the company; to restrain the Respondents from entering into or handing over the possession of the Company's landed property to third parties, etc.

b. The Petition was finally disposed of, by the Hon'ble CLB, by an Order dated 10.11.2006 with the following actions:

i. The Company will convene and hold a meeting of its members to elect directors not exceeding five in number, upon which the board so constituted will appoint one of its directors to be a Managing Director. Hon'ble Justice Mr.



(Telephone No. 040 2354 7977/2360 0359) will preside over the meeting convened in terms of this order. He is at liberty to take the services of any Practising Company Secretary of his choice in discharge of his functions.

- ii. The Chairman will work out the entire modalities of convening and holding of the general meeting in consultation with the Company;
- iii. The Chairman of the meeting will forward a report on the proceedings of the general meeting within ten days of conclusion of the meeting;
- iv. The Board of Directors constituted in terms of this Order shall forthwith replace the existing Board and shall –
 - (a) Manage the day to day affairs of the Company as per the Memorandum and Articles of Association of the Company;
 - (b) Take necessary steps for due and proper sale of the landed property belonging to the Company under the supervision of the Chairman appointed by this Bench for the best possible price and distribute the sale proceeds among all the shareholders according to their holding in the Company;
 - (c) Deliver share certificates to the members in respect of their holding in the Company. ✓



- v. The sale of 570 sq.yards of the landed property already effected and registered by the Company in favour of third party purchasers is confirmed
- c. Pursuant to the above Order, Company Appeal No 4 of 2007 and several CAs No 288 of 2008 and batch, were filed before the Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad, by questioning the Order of the CLB and seeking several other reliefs by the respective parties. Ultimately, the Hon'ble High Court was pleased to dismiss the said Company Appeal by an Order dated 13.03.2008 and also disposed of all CAs filed in the case, by confirming the Order of the CLB.
- d. Pursuant to the appointment of Hon'ble Justice Shri P. Ramakrishnam Raju as the Chairman, he has taken appropriate action to implement the directions of CLB in the said Order. Ultimately, on clearing several legal hurdles/objections by the parties, he was able to conduct the extraordinary general meeting on 30.08.2008, and results of the elections were ultimately declared on 03.01.2009 by declaring that 5 candidates, who have secured highest votes as elected. The CLB, on filing this application, passed interim orders on 2.1.2009 by observing that any decision that may be declared by the Chairman of the meeting would not be implemented without the leave of the Bench. Hence, the next course of action as contemplated under clause IV of order



dated 10.11.2006 i.e the new board so constituted shall have to manage the day to day affairs of the company as per Memorandum and Articles of Association of the company and to take necessary steps for due and proper sale of landed property of company in question under the supervision of chairman for the best possible price and distribute the sale proceeds among all the shareholders according to their holding in the company and to deliver certificates to the members in respect of their holding in the company are kept pending.

- e. The Applicants herein have filed the present Application under Regulation 44 of CLB Regulations 1991 by seeking several directions disputing the votes cast in election etc and sought directions to the Chairman also.

3. The Applicants have questioned the conducting of elections on various grounds and also raised several errors in the finalization of the list of shareholders in conveying and conducting the meeting by the Learned Chairman in accordance with the orders of the Hon'ble Bench. Some of the parties have stated to have instituted several civil suits before civil courts based on the disputes raised in present case. The applicants herein don't want the Hon'ble Chairman to complete the course of action to be taken in accordance with directions given by CLB in the said order, on one ground or the other.



4. It is not in dispute that the order of the CLB dated 10.11.2016 has become final. So the direction of the CLB as mentioned supra is to be implemented under the Chairmanship of Justice P Ramakrishnam Raju in full without any deviation. It is also not in dispute that CLB, after considering the entire gamut of dispute in question and, after considering various contentions raised by the parties and, taking into consideration the settled position of law on the issue, and , by exercising the powers under Section 402 of the Companies Act, 1956, has passed the above Order. The Applicants cannot again dispute each and every action taken by the Chairman appointed by CLB. It is not in dispute that the Order was passed with a view to bring an end the matters complained of in the Company Petition. The Hon'ble Tribunal also considered various suits, land disputes, etc.

5. The Petition was filed in the year 2002 and lapsed more than 14 years since then, and still the parties are raising frivolous and pure technical issues so as to see that the issue in question should be kept pending without reaching finality at least in accordance with the directions of CLB. The CLB, after considering the entire issue, has appointed an experienced higher level judicial officer to oversee the directions of CLB to be implemented. It is to be seen that the Hon'ble Chairman has not faced any difficulty in implementing the directions of CLB, but the applicants herein raising several disputes , which in our prima



facie opinion, are hardly have any merits, in order to stall the proceedings in question to reach its final stage.

6. The parties to the Application have submitted a letter dated 10.11.2016 given by the Hon'ble Chairman & Hon'ble Justice Shri P. Ramakrishna Raju, former Judge of AP by conveying his willingness to supervise the actions of the new Board for proper sale of landed property in question for the best possible price and to distribute the sale proceeds to all shareholders as per their holding in the Company as directed by the CLB.

7. We have heard some of the parties to the litigation, who have appeared and pleaded that the Tribunal to pass appropriate orders to see that the longest pending litigation should reach its finality. Hence, we have suggested to them to give their grievance in writing to the Hon'ble Chairman for his consideration.

8. It is relevant to point here that as per Section 430 of the Companies Act, 2013, no civil court have any jurisdiction over the matters of Company affairs. Section 430 of Companies Act, 2013 reads as under:

“ No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the



Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal. ”

It is to be mentioned herein that the parties have submitted to the jurisdiction of CLB/NCLT and thus the matter was decided and it became final and thus all the parties to the litigation are bound by the order of CLB. And they cannot now be permitted to raise frivolous litigation by abusing the process of law.

9. In view of the above facts and circumstances of the case, and to see an end to the longest pending issues of the company, we pass the following orders:



- a) We hereby vacate the interim orders dated 2.1.2009 passed by Hon'ble CLB in CA No. 138 of 2008;
- b) We request the Hon'ble Chairman to constitute a New Board as per the elections conducted by him and, see that the new Board takes necessary steps for due and necessary sale of the landed property of the company in question and distribute the same among the shareholders as directed by CLB in its Order dated 10.11.2006 : to deliver share

certificates to the members in respect of their holding in the Company;

- c) The parties to the litigation are at liberty to submit their grievance(s) if any, in writing , to the Newly Constituted Board and the Hon'ble Chairman, within a period of two weeks from the date of receipt of copy of order and, the Newly constituted Board and the Honble Chairman , may attend to those grievance(s) , in accordance with law and the directions of CLB dated 10.11.2006;
- d) The Hon'ble Chairman is at liberty to take all necessary professional services and security ;
- e) The Hon'ble Chairman can fix his further remuneration and other incidental expenses , which shall be borne by the Company and the litigants ;
- f) The Hon'ble Chairman is requested to make available his final report after completing the full mandate given by CLB in its order dated 10.11.2006 but request to keep pending the actual distribution of the sale proceeds to the respective parties till further orders to be passed in the present Company Application.
- g) All the parties to the litigation are hereby directed to extend full Co-operation to the Newly Constituted Board and the Hon'ble Chairman to discharge their legal functions and duties as mentioned above.

h) Post the CA No. 138 of 2008 on 28.12.2016 for further orders.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (T)



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

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (J)

**CERTIFIED TO BE TRUE
OF THE ORIGINAL**