



S.No.8

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
04-08-2022 AT 10:30 AM THROUGH VIDEO CONFERENCE.

IA(CA)/81/2022 in CP No.31/241/HDB/2022

U/s 241 of Companies Act, 2013.

IN THE MATTER OF:

Mr. Rajasekhar Amancherla & Other

...Petitioners

Vs

M/s. Abhaya Balaji Estates Ltd & 7 Others

...Respondents

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA No. 81/2022 in CP No. 31/241/HDB/2022

1. The Company Petitioners are the Applicants herein. The Company Petition has been filed inter-alia, alleging oppression and mismanagement of the affairs of the 1st Respondent Company by Respondents 2 to 6. In so far as the IA is concerned, the Applicant, inter-alia, has sought Ad-Interim Injunction restraining the Respondent No.2 to 5 from conducting proposed AGM scheduled to be held on 05.08.2022 and stay the operation of notice of 17th Annual General Meeting dated 05.07.2022 etc.
2. This Tribunal after ordering notice to the Respondents on 03.08.2022 heard the Ld. Counsel for the Applicant and the Ld. PCS representing the Respondents. The Ld. PCS representing the Respondents while orally opposing the Application, submitted that he may be granted time to file counter. However, Ld. Counsel for the Applicant submitted that since the impugned AGM is scheduled on 05.08.2022, if this Application is not heard before 05.08.2022, the relief as sought for will become infructuous. In the light of the urgency expressed, we have heard Shri Y. Suryanarayana for the Applicant and Ld. PCS S. Chidambaram for the Respondents and perused the records. We find force in the submissions of the Ld. PCS that R-1 be given an opportunity to file counter. However, considering the urgency pleaded, while granting opportunity to R-1



Company to file their counter, if any. Pending filing of such counter, we make the following interim order.

3. The gist of the averments as made in the Application for the purpose of interim relief is concerned, the 1st Applicant is a Director and shareholder of the 1st Respondent Company having 1,11,583 equity shares representing 23.36% of the outstanding equity share capital of the 1st Respondent. The 2nd Applicant who is the wife of the 1st Applicant is also a shareholder of the 1st Respondent Company having 1,26,536 equity shares representing 26.49% of the outstanding equity share capital of the 1st Respondent Company. Thus, both the Applicants together hold 49.85% share in the 1st Respondent. It is further stated that the Applicant and 2nd Respondent are the sons of Late Shri Amancherla Narasimha Rao and the 2nd Respondent is the elder brother of 1st Applicant. It is stated that subsequent to the death of Shri Amancharla Narsimha Rao, the 2nd Applicant who is the wife of 1st Applicant and the 3rd Respondent who is the wife of 2nd Respondent were inducted as Additional Directors of the Company in the Board Meeting held on 20.07.2021. While it was so, to the utter shock and dismay of the Applicants, upon verification of the e-form filed on the MCA website, the Applicants came to know that the Respondents 2 & 3, behind the back of the Applicants played fraud on them and on 29.12.2021 inducted Respondents 4 & 5 as Additional Directors into the Board of the 1st Respondent.
4. It is stated that in the Board Meeting dated 29.12.2021 alleged to have been conducted, wherein the 2nd Respondent has appointed the 4th & 5th Respondents, who are none other than the daughter and father in law of the 2nd Respondent as Additional Directors, no notice of the so called Board Meeting was given/sent to the Applicants. Therefore, according to the Ld. Counsel the Board Meeting dated 29.12.2021 and the resolution passed therein are *per-se* contrary to the provisions contained in the Companies Act, read with rules and Secretarial standards, besides Articles of Association of the Company. In this regard, the Ld. Counsel placed reliance on Section 173 (3) of the Companies Act and Clause 1.3.1 of Secretarial Standard on Meetings of the Board of Directors.
5. The Ld. Counsel for Applicant submitted that as per Section 161 (1) of Companies Act, Additional Directors shall hold office up to the date of the next AGM or the last date on which the AGM should have been held whichever is earlier Accordingly to the Ld. Counsel since the AGM for the Financial Year 2021 not conducted, the Additional Directors viz. 2nd Petitioner and the 3rd Respondent ceased to exist and deemed to have vacated the office of Directors of the 1st Respondent and therefore, since



01.12.2021, the Company is having only 2 Directors viz. Applicant No.1 and Respondent No.2. It is stated that in terms of Section 149 (1)(a) of the Companies Act, there should be a minimum three Directors in the Board of Directors in case of public limited company and the 1st Respondent being a public limited company, it shall have minimum three Directors. Therefore, according to the Ld. Counsel, there is no quorum for conducting the Board Meetings ever since 01.12.2021. Hence, whatever decisions taken by the Board of the 1st Respondent Company are *per-se* illegal and invalid.

6. Ld. Counsel further submitted that even as per the impugned notice of AGM dated 09.07.2022, the annual accounts of the 1st Respondent were not even prepared and therefore, the sole purpose of the intended AGM on 05.08.2022 is only to transact special business viz. to appoint the 3rd Respondent as Director and not to adopt Audited Balance Sheet of the current financial year. In this regard, Ld. Counsel invited our attention to the letter of the Company Auditor dated 12.07.2022 and submitted that in the above backdrop, if the meeting scheduled on 05.08.2022 is allowed to take place, the same amounts to perpetuating illegality besides allowing the 2nd Respondent to continue oppressive acts towards the Applicants, which is not in the interest of 1st Respondent, as such the Tribunal may grant interim stay of AGM scheduled to be held on 05.08.2022.
7. *Per contra*, Ld. PCS while vehemently oppose ng the grant of interim stay, submitted that AGM of the 1st Respondent already got delayed and therefore the intended AGM which is for transacting the business mentioned in the notice, shall be allowed to take place. According to the Ld PCS, mere lack of quorum itself cannot invalidate the Board resolutions that were held post 01.12.2021 and also the intended AGM dated 05.08.2022. In this regard the Ld. PCS placed reliance on the following rulings.
 - (i) Amritsar Swadeshi Woollen Mills Private Limited vs Vinod Krishan Khanna and Ors of Hon'ble NCLAT in Company Appeal (AT) No. 256 of 2018.
 - (ii) Mohanlal Ganpatram and Anr vs Shri Sayaji Jubilee Cotton and Jute Mills Co Ltd & Ors of Hon'ble Gujarat High Court.
 - (iii) Hanuman Prasad Bagri & Ors vs Bagress Cereals Pvt Ltd & Ors of Hon'ble Supreme Court.



8. According to the Ld. PCS, the Applicant never attended any board meeting despite receipt of notices and same has resulted in not submitting the annual financial statements for the previous financial year, hence the Applicant is not entitled for any interim relief in this Application. The Ld. PCS also placed reliance on the ruling of Hon'ble Supreme Court in the matter of Hanuman Prasad Bagri & Ors vs Bagress Cereals Pvt Ltd & Ors in support of his intentions and stated that no relief be granted to the Applicants at this stage.
9. Having heard the Ld. Counsel for Ld. PCS and on perusal of the record, prima facie, we are of the opinion that the 1st Respondent being a public limited company shall in terms of Section 161 (1) have minimum three Board of Directors for transacting the business. There is no dispute as regard to the Directorship of the 1st Applicant and the 2nd Respondent. The impugned notice scheduling the AGM was sent by the 2nd Respondent alone. Therefore, when it is mandatory in terms of Section 148 (9) (1) (A) of the Companies Act, to have minimum three Directors in the Board in case of the public limited company like the 1st Respondent, and when there are only two valid Directors as on date, the very "locus standi" to take up any business of the Company is at stake. Therefore any decision taken by such Directors cannot be legal and valid. Further when the letter of the Auditor dated 12.07.2022 has categorically states that the financial statements for the current financial year which are required to be approved in the proposed AGM on 05.08.2022 are not even prepared and signed by the Directors, no record is placed before us till date, that said statements were in fact prepared and signed by the two Directors, as such, the question of approval of annual accounts of 1st Respondent in the proposed AGM does not arise. We therefore find no purpose in allowing the intended AGM scheduled on 05.08.2022.
10. We are satisfied that the Applicants have made out a, prima facie, case and the balance of convenience also lies in his favour. Hence, we are inclined to stay the AGM scheduled on 05.08.2022. At the same time we direct the Respondents to file counter, if any, within two weeks, upon filing the counter, the Application will be heard and decided on merits.
11. List the CP for hearing on 13.09.2022

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)