

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) No. 07 of 2017

(arising out of Order dated 8th December, 2016 passed by NCLT, Mumbai Bench in T.C.P No. 80/397-398/CLB/MAH/2015)

Sanjay Parlikar & Anr.

.....Appellants

Vs.

M/s Ajit Scanning & Diagnostic Centre Pvt. Ltd.

.....Respondents

Present: For Appellants: Mr. Krishnendu Datta, Ms. Apurva Marwani, Mr. Siddhesh Bhole and Mr. Shantanu Parashar, Advocates

For Respondent: Mr. Mayur Khandeparker and Mr. Rahul D.Oak, Advocates

J U D G E M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The appellant has challenged the Order dated 8th December 2016 passed by the National Company Law Tribunal (hereinafter referred to as the 'Tribunal'), Mumbai Bench in TCP No. 80/397-398/CLB/MAH/2015 whereby and where under the Tribunal while held that there is no 'oppression and mismanagement' but restored appellant as Director of the Company.

2. The Company Petition was filed by Appellants/Petitioners (2% shareholders) under section 397 & 398 of the Companies Act 1956 alleging 'Oppression and Mismanagement'. It was alleged that the 1st respondent company was not holding any Board or Extra Ordinary General Meeting and

the 1st appellant has been removed as director of the 1st respondent company without notice to them. It was further alleged that the 2nd and 3rd Respondents intended to create third party interest in the property of 1st respondent company and there were mismanagement due to non-payment of dues.

3. The relevant facts as noticed by Tribunal are as follows: -

Company Petition revolving around three players, mother and two sons, in relation to the affairs of RI Company, namely M/S. Ajit Scanning and Diagnostic Centre Pvt. Ltd., which is wholly owned by the mother, two sons and their wives, wherein, mother having more than 98% shareholding. Wife being natural ally of husband, P2 (Shortly called "Vishakha") being the wife of P1 (Shortly called "Sanjay") and by holding some fraction of shareholding in her name, they together filed this CP against Sanjay's mother (R2- Shortly called "Savita" or "mother") and his brother (R3- shortly called "Rajiv")

Company started by their father deceased Shrikant Parlikar (shortly called "Shrikant") in the year 1993 taking Sanjay and his two other sons namely Mr. Satish Parlikar (shortly called as "Satish") and Mr. Ajit Parlikar (shortly called Ajit) as permanent directors on the Board in the year 1993 to running diagnostic centre business in one of the prospering suburbs of Mumbai i.e. Kalyan, obviously the Company also prospering well. In the meanwhile, their father Mr. Shrikant died intestate in the year 2010. By the time, the majority shareholding was lying in the name of their father late Shrikant, the other two brothers Satish and Ajit, after the demise of their father, left the Company and their directorship as well by transferring their

shareholding in the name of their mother. Because of some internal understanding and rearrangement in the family, father's shareholding has been transmitted to the mother resulting her to hold more than 98% shareholding of the Company. Here, it is also pertinent to mention that a family partition deed was executed on 22.03.2012 dealing with the entire assets of the family and their distribution among themselves agreeing in clause 2&3 of the deed that the mother (R2), Sanjay and Rajiv would manage RI Company excluding other brothers and the mother would ultimately transfer some percentage of shareholding (in clause 3, however it has been left blank as to how much shareholding out of her shareholding is contemplated to be transferred to Sanjay and Rajiv) to Sanjay and Rajiv. By virtue of their arrangement in between them, it appears that this Company has been left to be managed by Sanjay and Rajiv under the supervision of their mother. It is apparent on record that above 98% shareholding is presently held by the mother, perhaps, to continue this business jointly without any differences between the brothers. Somehow things went wrong in the last one/two years, thereby Sanjay and Rajiv started fighting, henceforth the company landed up in this litigation."

4. After going through the relevant facts and records the Tribunal held that there was no "Oppression and Mismanagement". The Tribunal also held that non-payment to statutory dues by the company cannot be treated to be cause of 'Oppression' to the appellants or any member or the company. Tribunal further held that even the proposal for removal of 1st appellant from the family company cannot be treated to be offensive act.

5. Though the Tribunal by impugned judgement held that there was no oppression and mismanagement, but on the request of the appellants and taking into consideration that the 1st appellant has no other source of income except from the family company, restored the 1st appellant as Director of the company without any power. The 1st appellant has been directed not to interfere with the day to day affairs of the company as long as 2nd respondent (mother) is alive.
6. Mr. Krishnendu Datta, Learned Senior counsel for the appellants mainly raised question of removal of 1st appellant as Director of the Company and contended that 1st appellant once restored as Director he ought to have allowed full power as he was performing prior to filing of the Company Petition.
7. It was also contended that the 1st appellant was removed as Director in violation of the provisions of the Companies Act 1956. The (Extraordinary General Meeting (EGM) was called for without notice to them and the procedure for removal of director was not followed.
8. On the other hand, according to respondents, the appellants had information about removal of 1st appellant, and both the appellants in fact attended the EGM held on 19th December 2015.
9. It appears that the Company Petition was filed by appellants alleging 'Oppression and Mismanagement' anticipating removal of the 1st appellant as director of the company. When the Company petition was filed the 1st appellant had not been removed as director.
10. The erstwhile Company Law Board by its order dated 9th December 2015 allowed the company to hold EGM on 19th December 2015 clarifying the

1st appellants' right of notice thus stands waived, citing the ratio laid down in 'LIC Vs. Escorts Limited' wherein the Apex Court held that Courts must remain slow in interfering with exercise of democratic rights of the majority shareholders in dealing with the affairs of the company.

11. Being not satisfied with the order of Company Law Board, the 1st appellant filed Appeal before the Hon'ble High Court of Bombay, on 18th December 2015 and the High Court by consent order allowed the company to hold EGM on 19th December 2015, as was ordered by the Principal Bench of the Company Law Board on 9th December 2015, but directed the parties not to give effect to the same until 16th January 2016.

12. In the Extra Ordinary General meeting held on 19th December 2015, it was decided to remove 1st appellant but the decision was not given effect. In the meantime, the High Court obtained undertaking from the appellants that they will not operate the SBI Account and will provide Bank Statements from 1st August 2015 to the Respondents. The High Court of Bombay, while disposing the appeal on 22nd April 2016, disposed of the case on consent terms that the mother would continue as 'Chairman' of the Board of Directors with right of a casting vote.

13. From the aforesaid background, the argument advanced by the Learned counsel for the appellants that EGM was held on 19th December 2015 without notice to the appellants cannot be accepted, particularly when the appellants had attended and taken part in the said meeting. Therefore, the EGM cannot be declared illegal.

14. In any case, as we find the 1st appellant has already been restored as director of the company, though without the full power, we are not inclined to interfere with the same for the following reasons: -

From the impugned judgement we find that the Tribunal noticed various wrongful activities of the 1st appellant who was creating hindrance and disturbing the affairs of the company. The respondent no. 2, the mother, who hold 98% of shares was suffering from cancer. For her treatment the 2nd and 3rd respondents jointly issued a cheque and went to Punjab National Bank to withdraw money. However, to obstruct the same the 1st appellant wrote a letter to the Bank with request not to allow them to withdraw the money from the account. Taking into consideration of the inhuman activities of 1st appellant, the Tribunal while restored the 1st appellant as director, refuse to grant full power.

15. Learned Senior counsel appearing on behalf of the appellants referred to a letter written by 1st appellant to the Bank to suggest that there were defects in the cheque, therefore he request the Bank not to encash the amount. However, it is not dispute that the 1st appellant by his letter to the Bank requested not to allow the mother to withdraw the money for her treatment of cancer.

16. We agree with the finding of the Tribunal that there was no 'Oppression and Mismanagement' on the part of the respondents in removing the 1st appellant as both the appellants had attended EGM in which it was decided to remove him. In such circumstances, in fact there was no occasion for the Tribunal to restore the 1st appellant as director of the company. However, taking a lenient view and the fact that the 1st appellant is son of the 2nd

respondent, who is 98% shareholder and the mother also agreed and as the 1st appellant has no other source of income, if the Tribunal restored the 1st appellant as director without any power, we are not inclined to interfere with the same.

17. We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances of the case there shall be no order as to cost.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
30th March, 2017