

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) No. 114 of 2020

IN THE MATTER OF:

Sarabjit Cold Storage Pvt. Ltd. & Ors.

...Appellants

Vs

Gopal Singh & Ors.

....Respondents

Present:

For Appellants: Mr. Arun Kathpalia, Sr. Advocate with Mr. Shailendr Singh, Advocates

For Respondents: Mr. Joy Saha and Mr. Arik Banerjee, Advocates for Respondent Nos. 1 to 8.

O R D E R

(Through: Virtual Mode)

31.08.2020 Heard Mr. Arun Kathpalia, learned Senior Counsel for the Appellants and Mr. Joy Saha, learned Counsel for the Respondent Nos. 1 to 8. Learned Counsel for the Appellants states that unnumbered Company Petition was taken up and without giving liberty to file Reply Affidavit or documents in support of submissions, the impugned order was passed. Learned Counsel for the Respondents is submitting that the matter was taken up after giving advance notice. It is stated that the Appellants filed Defence Note. Learned Counsel for the Appellants submits that the said Defence Note is at Annexure-A8 at pages 587 to 588. It is stated by the learned Counsel for Appellant that this Defence note and the List of Dates and Events as given at page 589 were also not considered by the learned NCLT, Kolkata. Learned Counsel for the Respondents, however, submits that the Defence Note was considered in Paragraphs 11, 12 & 14 of impugned order.

2. This Appeal has been filed by the Appellants against the Impugned Order dated 8th July, 2020 passed by the learned Kolkata Bench, Kolkata in un-numbered Company Petition. It is stated that now the Company Petition has been numbered as 762/KB/2020. The Appellants claim that the Appellant Company had taken steps to call Extra Ordinary General Meeting (in Short EOGM) which was held on 27.06.2020 and all the procedure was followed to call the EOGM. The Appellants hold 77.8% shares it is stated. In the EOGM the Respondent Nos. 1 & 2 were removed from the Post of Directors in a lawful manner after giving sufficient opportunity. It is stated that the removal of Respondent Nos. 1 & 2 was accepted by ROC Jharkhand on 29.06.2020. Learned Counsel for the Appellants points out that the Impugned Order itself mentions that it is an un-numbered Company Petition. Learned Senior Counsel for the Appellants- Mr. Arun Kathpalia submitted that this Company Petition under Sections 241, 242 and 244 of the Companies Act, 2013 came up for consideration and on the same date, after giving opportunity only to make oral submission to the Appellants, the order came to be passed. It is argued that there was denial of Principles of Natural Justice, as no opportunity was given to file Reply and documents and the Interim Relief in the Company Petition was directly granted when the petition came up.

3. Against this learned Senior Counsel for the Respondents Mr. Joy Saha submits and referred to various pages in the Appeal Paper Book to show that the requisition of EOGM was not held as per proper procedure and that this

is discussed by NCLT. It is denied that no proper opportunity was given to Respondent Nos. 1 and 2 to defend themselves.

4. Learned Counsel for the Appellants has referred to paragraph 1 to 15 of the Impugned Order to submit that in these paragraphs various submissions of both sides were noted and in paragraphs -16 & 17 of the NCLT order read as under:

...

“16. After hearing learned counsel for the parties, we agree with the arguments of Mr. Joy Saha, that the meeting in question had been called hurriedly, without following the relevant provision of the Companies Act, 2013, which would tantamount to denial of rights of the minority shareholders/directors. Since no other notice other than these two notices has been placed on record or highlighted we do not find anything to supersede the arguments of Mr. Saha. Prima facie, we find that this is a meeting under Sub Section (4) of Section 100.

17. We do not find any substance in the submission of Mr. Banerjee that the meeting dated 27th June, 2020 had been called under section 100(1). He has not been able to show an iota of evidence or material, and no reasonable inference could be drawn from the Defence submitted by the respondents to prove that this was an EOGM convened exclusively and

independently on the strength of the majority decision of the Board of Directors not on the requisition of an eligible shareholder(s). As the meeting has clearly been held in suspicious circumstances and does not appear to be above board, because there was no proper service of notice to all concerned, the Resolution passed in the meeting thereby removing the petitioners 1 and 2 from the directorship prima facie found not in consistence with the provisions of the Companies Act, 2013. Balance of convenience also favors the petitioner. We therefore passing the following interim orders:

- (i) The operation of the Resolutions passed in the meeting dated 27th June, 2020 is stayed until further orders;*
- (ii) The Resolution passed in the meeting thereby removing the petitioners 1 and 2 from the directorship is directed not be acted upon until further orders;*
- (iii) The parties to file reply/rejoinder affidavits, if any within four weeks or immediately within one week after lifting of the lock down whichever comes earlier by serving copy to the petitioners, and the petitioners are directed to file rejoinder within 2 weeks of receipt of reply affidavit by serving copy to the respondents.*

Parties are at the liberty to mention the petition for listing after the lockdown is lifted. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.”

...

5. Learned Counsel for Appellant submits that paragraph-16 & 17 of the Impugned Order itself mentions that the findings are prima facie. However, the order was passed, which is to operate till further orders and thus will work during pendency of the petition. The resolution which was passed by the EOGM has been stayed. Learned Counsel submits that the Company has various grievances against the actions of Respondent Nos. 1 & 2. Counsel referred to the grounds raised in the Appeal and facts mentioned and stated that the Appellants have good case on merits.

6. Para 1 of impugned order reads as under:

*“1. This is an unnumbered Company petition filed under Sections 241, 242 and 244 of the Companies Act, 2013 came up for consideration on today which was filed by the Petitioners **M/s. Gopal Singh & Ors** through e-mail praying, inter alia, restraining the respondent nos. 2 to 12 from taking any step or further steps or giving any effect or further effect to the notice dated 3rd June, 2020 seeking to convene the Extraordinary General Meeting of the company on 27th June, 2020 at 11 a.m. at the earliest. The urgency set out in the application being found satisfactory, listed this application for hearing on today by giving advance notice from the Registry of Kolkata*

NCLT Bench to the respective parties, i.e. the petitioners and the respondents respectively.”

....

7. This makes it clear how the matter was taken up and Orders passed. We have already mentioned that learned Counsel for the Appellant has referred to what is stated to be Defence Notice and List of Dates and Events and added that the learned NCLT did not go into the details put even in the Defence Note and has not given reasons for not accepting the defence. Learned Counsel points out that Learned NCLT merely stated that it was in agreement with the argument of Mr. Joy Saha as recorded in paragraph -16 and in paragraph-17 went on to state there was no substance in the submissions of Mr. Banerjee. Learned Senior Counsel for the Appellants referred to paragraph -17 of the Impugned Order where the learned NCLT states that the Appellants have not been able to show an iota of evidence or material and no inference could be drawn from the Defence submitted by the Respondents to prove that EOGM was convened on the strength of the majority decision of the Board of Directors. Learned Counsel submits that without giving any opportunity of even filing Reply or documents, learned NCLT simply rejected the defence put up saying there was no evidence. Learned Counsel for Respondents however, submits that opportunity was given.

8. It appears from the Impugned Order that now Reply and Rejoinder are directed to be filed in the Company Petition. No opportunity was given before passing Interim Order to file Reply to oppose Interim Order. The Order does not say that it will operate till next date or will be reconsidered on receipt of Reply. The impugned order was passed bypassing the Principles of Natural

Justice and thus without going into the merits we set aside the Impugned order and remit back the matter to NCLT, Kolkata. The Appellants to file their Reply Affidavits to the Company Petition in which they are at liberty to oppose the interim relief sought.

9. Learned Counsel for the Appellant submits that they will file Reply Affidavit within one week from today. Learned Counsel for Respondents states that they will file Rejoinder in 3 days thereafter. Both sides may act accordingly. Learned NCLT will then hear both the parties on the specific issues with regard to Interim Relief sought by the Respondent Nos. 1 & 2 and decide the same urgently preferably within one month from the receipt of the Rejoinder. Both the parties agree to cooperate with the learned NCLT, Kolkata. The learned NCLT will decide the issue afresh without being influenced by the earlier order.

10. With these directions, the Appeal stands disposed of. No order as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn