

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) NO.99 OF 2020

(Arising out of judgement dated 5th June, 2020 passed by National Company Law Tribunal, Kolkata Bench, Kolkata in CP__ /KB/2020).

In the matter of:

1. Urmila Ray,
W/o Late Ramesh Kumar Ray,
R/o 143b, NSC Bose Road,
Kolkata 700040.
2. Shreekant Ray,
s/o Late Ramesh Kumar Ray,
R/o 143b, NSC Bose Road,
Kolkata 700040

Appellant

Versus

1. Seth Chemical Works Pvt Ltd,
13, Camac Street,
Kolkata 700017
2. Surendra Kumar Seth,
S/o Late Nand Gopal Seth,
R/o 3 Wood Street,
Kolkata 700016
3. Ashok Seth,
S/o Mahendra Kumar Seth,
1b, Outram Street,
Kolkata 700017
4. Mahendra Kumar Seth,
S/o Late Nand Gopal Seth
1b, Outram Street,
Kolkata 700017

5. Sheetal Seth
W/o Sandeep Seth,
3 Wood Street,
Kolkata 700016.

Respondents

Mr. Shwetaank Nigam, Mr. Anirban Ray, Mr. Satadeep Bhattacharya, Mr. Jayant Mehta and Mr. Ashish Choudhary, Advocates for Appellant.

Mr. Ratnako Banerji, Sr. Advocate with Mr. Rahul Malhotra, Advocate for R1 to R3.

Mr. Shaunak Mitra, Mrs Anamika Pandey and Mrs Amrita Pandey, Advocates for R4 to R5.

JUDGEMENT

(20th October, 2020)

Mr. Balvinder Singh, Member (Technical)

1. The present appeal has been preferred by appellant under Section 421 of the Companies Act, 2013 against the impugned order dated 5th June, 2020 passed by National Company Law Tribunal, Kolkata Bench, Kolkata (in short 'Tribunal') in unnumbered CP __/KB/2020 vide which the Tribunal has declined the interim relief prayed by the appellant.

2. The brief facts of the case are that the 1st respondent is a company incorporated under Companies Act, 1956 on 7th April, 1971. The company has issued and subscribed 22612 equity shares of Rs.100/- each. The appellants are shareholders of 1st respondent and holds about 5652 equity shares(24.99%). The Seth family consists of Nand Gopal Seth Group, Brij Mohan Seth group and Ramlal seth Group altogether holds 74.97% shares in 1st respondent and each group individually holds 24.99% shares. The appellants (original petitioners). The appellants and 2nd and 3rd Respondents are director of the company

3. The appellants filed an unnumbered application under Section 241 and 242 of the Companies Act, 2013 alleging that the 1st respondent company's affairs have been conducted by the 2nd to 5th Respondent in a manner oppressive to the appellants and in a manner prejudicial to the interest of the 1st respondent company and pressed for an early hearing of the application seeking the following relief:

- i) Injunction restraining the respondents and each of them and/or their group and/or their men or agents and/or servants from giving any effect or further effect to the Resolution dated 20th January, 2020 and/or from withdrawing any sum of money from the bank accounts of R-1 company and/or altering in any manner the shareholding pattern of R-1 company and/or from holding and/or convening any Board Meeting or giving effect to or regularising any matter in respect of R-1 company and/or from dealing with and/or transferring or creating any third party interest in R-1 company or the assets of R-1 company and/or from interfering with and/or intermeddling in the management or administration of R-1 company in any manner whatsoever;
- ii) Injunction restraining the Respondents Nos 4 and 5 from holding and/or claiming to be the Directors of R-1 company.
- iii) Injunction restraining the respondents and each of them from expending any funds of the company in any manner whatsoever including the purpose of contesting the present proceedings;

iv) In the alternative and without prejudice to the aforesaid prayers, this Hon'ble Tribunal may be pleased to direct the management and the administration of R-1 Company be conducted by

4. After hearing the parties on the interim relief at length, the Tribunal ordered that **“the balance of convenience also does not favour the petitioners. In view of the matter I am not inclined to grant the interim reliefs as prayed for”**.

5. Being aggrieved by the said order dated 5th June, 2020, the appellants have preferred the present appeal.

6. Learned counsel for the appellant submitted as under:

a) that no Board Meeting was ever held on 20th January, 2020 either at 12 noon or at 4 PM as no notice of the Board Meeting held at 4 PM was ever served upon the Appellants, who are the Directors of the Company.

b) that the appellants are making a story that two notices both dated 7th January, 2020 were sent together to the appellants for holding of Board Meetings at 12 Noon and 4 PM respectively.

c) that two directors (one director and one Addl. Director) were illegally appointed in the 1st Respondent company on 20th January, 2020 as the appointment of director cannot be by way of Board Meeting by way of a General Meeting. Further the Articles of the Association of the company do not provide for appointment of Additional Director by way of Board Meeting.

d) that the Respondents have sought to illegally amend the Articles of Association of 1st Respondent by way of Board Meeting by which the Respondents are trying to change the upper limit of the number of directors of Board of 1st respondent to 6 instead of 7.

e) that the Notice received by the Appellant for a Board Meeting to be held on 20th January, 2020 at 12 PM was in respect of a completely different agenda (Page 182 and 184 of the appeal).

f) that the Board Resolution has been manufactured as the signature of the appellant prima facie appears do not match with the fonts and caps of the letters on the first two pages.

g) that 4th Respondent was shown to be appointed as Director but in the form DIR 12 the 4th Respondent No.4 is shown to have been appointed as Additional Director.

h) that the Respondents are using the funds of the company to sponsor the litigation against the appellants.

i) that the letter of appointment of 4th and 5th respondent and the letters submitted to Bank are totally different (Page 187 and 188 read with Paged 199 and 200).

j) that in the Board Meeting dated 20th January, 2020 the mandate to Bank was changed. The Respondents have failed to explain why they had intimated to the Bank about the change of mandate in Mid March, 2020 after a gap of 45 days approximately.

7. Reply on behalf of 1st to 3rd Respondent has been filed and they have submitted as under:

a) that two notices for the Board Meeting dated 20th January, 2020 were sent. The appellants have deliberately suppressed the fact that he has received only one notice for the Board Meeting scheduled to be held at 12 Noon. Learned counsel for the Respondent further submitted that the appellants have attended the Board Meeting at 4 PM and duly approved the resolution and the resolutions were passed unanimously with the consent of appellant and the appellants have signed the minutes of the Board Meeting.

b) that the appellants signed the minutes of the Board Meeting dated 20.01.2020 at 4 PM for appointment of Additional Directors and change in bank account operations and the appellants also signed the KYC documents being the signature card for change of bank account operations.

c) that the allegations of appellant that the Articles of Association do not contain power to appoint Additional Director is misconceived and baseless. Learned counsel stated that Article 11 states that the provisions of Table A in Schedule I of the Companies Act, 1956 Act are adopted and applied as Articles of the company.

d) that Section 28 of the Companies Act, 1956 read with Clause 72 of Table A there is power to appoint Additional Directors. Learned counsel for the respondent further stated that it is settled law where Articles are silent, the provisions of Table A will apply.

e) that the appellants are guilty of wrongfully freezing the bank operation of the Respondent company due to which the wages of more than 55 employees could not be paid for several weeks from March 2020.

f) that the appellants deliberately filed returns fraudulently by unilaterally manipulating the entries for their own malafide purposes for which the Respondents have to file the revised returns and also issued warning to the appellants vide email dated 31.10.2019 (Page 110 of reply).

8. Reply on behalf of 4th and 5th Respondent has also been filed. Respondents have stated that the appeal has been filed upon suppression of material fact in abuse of the process of law and is misleading and the balance of convenience does not lie in favour of the appellant. Basically the Respondents have supported the version of 1st to 3rd Respondent.

9. Rejoinder has been filed by the appellant and the appellant reiterated its statement made in the appeal.

10. We have heard the parties and perused the record. We have heard the parties and perused the record. We note that the relief sought in the main petition was also sought in the interim relief. As the Company Petition is still pending, therefore, we are not passing any order on the same.

11. However, the main issue raised by the appellant that he has not received notice for Board Meeting to be held on 20th January, 2020 at 4 PM and in the said meeting two directors have been appointed. Whereas the

Respondent has argued that two notices were sent to the appellant in one envelop, one for meeting at 12 Noon and the other for meeting at 4 PM. The appellant argued that he has received only one notice and that is for Meeting on 20th January, 2020 at 12 Noon.

12. As the subject matter on the validity of the meeting held with due notice or not will be decided over a period of time. We have also notice alleged two Board Meeting are allegedly held on 20th January, 2020 at 12 Noon and after that, on the same day at 4.00 PM. The Appellant contends that he has received notice of only one Board Meeting scheduled to be held 12 Noon on 20th January, 2020. However, service of notice of a second board meeting is disputed, which can be decided finally along with the petition. Meanwhile we think it proper to stay the operation on the Resolution passed in the alleged Board Meeting held at 4 PM on 20th January, 2020.

13. We further expect that hencefortgh the Company and its Director will communicate with each other with e-mail in addition to communication by normal channel made by the Company. This will end the controversy regarding service of notice. We also direct that till the decision of this case account of the Respondent Company will be operated by all the four directors, who were operating the account before the alleged board meeting dated 20th January, 2020.

14. In view of the foregoing discussion Appeal is disposed of with the direction to the National Company Law Tribunal to make an effort to decide

the Appeal on merit, after hearing both the parties expeditiously in terms of Section 422 of the Companies Act, 2013.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(V.P. Singh)
Member (Technical)

Bm