

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) No. 296 of 2019

IN THE MATTER OF:

1. VIJAY SAI POULTRIES PVT. LTD.

H. No. 38, 1st Floor,
NTR Municipal Kreedas Pranganam
Brindavan Garden, Guntur, Andhra Pradesh

... Appellant

Vs.

1. VEMULAPALLI SAI PRAMEELA

Flat No. 403, White Rose Apartment
9th Lane, Vijayapuri Colony, Guntur,
Andhra Pradesh State 522 007

... Respondent No. 1

2. VEMULAPALLI HARI KISHORE

Flat No. 403, White Rose Apartment
9th Lane, Vijayapuri Colony, Guntur,
Andhra Pradesh State 522 007

... Respondent No. 2

3. V. VASUNDRA

Flat No. 403, White Rose Apartment
9th Lane, Vijayapuri Colony, Guntur,
Andhra Pradesh State 522 007

... Respondent No. 3

4. CH DHANALAXMI

House No. 4684/18, SS Layout, B Block,
4th Main, 7th Cross, Davangere,
Karnataka State 577004

... Respondent No. 4

5. CH ANNAPURNAMMA

House No. 4684/18, SS Layout, B Block,

4th Main, 7th Cross, Davangere,
Karnataka State 577004

... **Respondent No. 5**

Present:

**For Appellant: Dr. UK Chaudhary, Sr. Advocate with Mr. Mansumyer
Singh, Advocate.**

For Respondents: Mr. Chava Badri Nath Babu, Advocate.

J U D G M E N T

Jarat Kumar Jain. J:

The Appellant 'Vijaya Sai Poultries Pvt. Ltd.' has filed this Appeal against the order dated 16.09.2019 passed by National Company Law Tribunal, Amaravati Bench, in I.A. No. 20 of 2018 in TCP No. 123/241/AMR/TP/2019 (CP No. 174/241/HDB/2017) whereby the Adjudicating Authority allowed the application filed by Petitioners (Respondents herein) and directed that forensic audit be conducted of the Appellant company since 31.03.2004.

2. Brief facts of this case are that Petitioners (Respondents herein) have filed Petition against the 'Vijaya Sai Poultries Pvt. Ltd., Mr. Naveen Kishore, Naveen Kishore HUF and Mrs. V. Roja Kishore under Sections 59, 241 and 242 of the Companies Act, 2013 (in brief the Act) alleging oppression and mismanagement by Mr. Naveen Kishore. In the petition, the Petitioners have filed an application under Rule 131 of the NCLT Rules, 2016 alleging that Mr. Naveen Kishore, Managing Director of the Company illegally transferred the shares of Respondents in his name by forging signatures in the Financial Year 2013-2014 without any

consideration. It is also alleged that Mr. Naveen Kishore started selling the immovable and moveable properties of the Appellant company illegally and misappropriated the sale proceeds. Mr. Naveen Kishore purchased 50 immovable properties in his name and his wife's name by utilizing the working capital and funds of the Appellant Company. Mr. Naveen Kishore has been operating the finances of the Appellant Company in an arbitrary and whimsical manner and has siphoned off Crores of Rupees belonging to the Appellant Company without accounting for the same. The same was done with the active aid and connivance of the auditors of the Company. Therefore, it was requested that an advocate-Commissioner be appointed to conduct a forensic audit of the Appellant Company by taking assistance of an Auditor for the check period 31.03.2004 till date.

3. The Application was resisted by Mr. Naveen Kishore on the ground that there is no illegal transfer of shares as alleged and the same are false allegations created for the purpose of denying the actual transactions done by Respondents. The Respondent No. 1, being the signatory of the Balance Sheet cannot plead ignorance of the share transfer, shareholding shown in the records. The Respondents for the first time alleged the forgery and fabrication of documents which was never raised earlier. There is a vague allegation that Mr. Naveen Kishore started selling moveable and immovable properties of the company illegally, however, in support of the said allegation, they have not filed any piece of evidence. The Respondent No. 1 being a signatory to the Balance Sheet and accounts of the company cannot seek appointment of another auditor to conduct a forensic audit.

In the application, it is not mentioned as to what were the sale proceeds which were not deposited in the account of the Company and were misappropriated or siphoned off by Mr. Naveen Kishore. Further, the Company Petition is filed with the mala fide intention to cause irreparable loss and injury to the Appellant and to also make unnecessary litigation against the Appellant Company as well as personal properties of Mr. Naveen Kishore and his family. The Respondents ceased to be the shareholders of the Appellant Company. The Application is devoid of merits, abuse of process of law and with a mala fide intention. Therefore, liable to be dismissed.

4. Ld. Tribunal allowed the application by passing the following Impugned Order dated 16.09.2019, which reads as under: -

Order

“The interim application be and the same is allowed on contest. The parties are directed to suggest the name of an auditor/a firm of auditor within two weeks for conducting forensic audit of the company. There is however, no need for appointment of an advocate commissioner.”

5. Being aggrieved by the said order, the Appellant Company has filed this Appeal.

6. Ld. Sr. Counsel for the Appellant submits that there is no prima facie finding of oppression or mismanagement as required under Section 242 (4) and 241/242 of the Companies Act. The Impugned Order is without reasoning or finding of fact and in fact, contains a one-line order directing that forensic audit be conducted.

It is settled law that there must be a recording of reasons in the order in support of conclusion arrived at. The giving of reasons in support of their conclusions by the judicial or quasi-judicial authority is essential to prevent unfairness or arbitrariness in reaching the conclusions. For this proposition, he relied on the judgments rendered by the Hon'ble Supreme Court in the matters of Karanti Associates Pvt. Ltd. & Ors. Vs. Masood Ahmad Khan & Ors. (2010) 9 SCC 496 and Woolcombers of India Ltd. Vs. Woolcombers Workers Union & Ors. (1974) 3 SCC 318. It is also submitted that the faith of the people in Tribunals can be sustained only if the Tribunals act fairly and dispose of the matters before them by passing well-considered orders as held by Hon'ble Supreme Court in the case of M/s Bombay Oil Industries Pvt. Ltd. Vs. UOI & Ors. (1984) 1 SCC 141.

7. Ld. Sr. Counsel for the Appellant further submits that the affidavit filed in support of the application is not sufficiently stamped hence, cannot be relied upon. For this purpose, he placed reliance on the Judgment of Hon'ble Supreme Court in the case of Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao & Ors. (1971) 1 SCC 545.

8. It was further submitted that the application has been filed under Rule 131 of NCLT Rules 2016 which relates to production of documents and form of summons. An order of directing that a forensic audit to be conducted could not have been passed in such an application. The Respondents have also filed an Application with the prayer to examine the signature of Respondent Nos. 2 to 5 and the letter of resignation for verification of signature. The said application has

been rejected by the Tribunal and the order has been affirmed by this Appellate Tribunal. Therefore, there is no evidence that the Mr. Naveen Kishore has forged the signature on share transfer deed and resignation letter.

9. Learned Senior Counsel for the Appellant also submits that the Respondent No. 2 filed an FIR against Naveen Kishore alleging forgery, cheating and criminal breach of trust. However, after investigation, the investigating agency found the said allegations to be false. Therefore, a closer report was filed. The Respondent No. 2 has also filed a pre-litigation case before the District Legal Services Authority, Guntur for the aforesaid allegations against Mr. Naveen Kishore, however, Respondent No. 2 himself prayed before the Authority to close the case. In such circumstances, there is no ground to allow the application for forensic audit. The impugned order is cryptic and non-speaking, therefore, liable to be set aside.

10. *Per Contra*, Ld. Counsel for the Respondents supports the impugned order and submits that Mr. Naveen Kishore is a Managing Director of the Appellant Company and has taken advantage of his position by indulging in oppression and suppression and has illegally transferred the shares of Respondents No. 2 to 5 on the basis of fabricated share transfer deeds and the resignation letter dated 31.03.2014 of Respondent No. 2. Mr. Naveen Kishore has illegally alienated/sold out the immovable properties of the Appellant Company and siphoned/diverted the funds for purchasing about 50 immovable properties in his individual name and in the name of his family members. Further, Mr. Naveen Kishore manipulated

the financial statements with ulterior motives and failed to conduct board meeting from time to time. Ld. Tribunal having considered the matter from all angles is justified in passing the Impugned Order directing that forensic audit be conducted of the accounts of the Appellant Company. There is no merit in this Appeal and is hence, liable to be dismissed.

11. After hearing the Ld. Counsel for the parties, we have considered their rival submissions and examined the record.

12. In the application, there is a vague allegation of fabricating, share transfer deeds and the resignation letter. In the application, it is not mentioned that in what manner Mr. Naveen Kishore siphoned off the money from the Appellant Company and when has he purchased 50 properties in the name of his family members out of the funds of the Company. Even in the application it is not mentioned as to how and when the Respondents got the knowledge that Mr. Naveen Kishore has indulged in fraudulent sale transactions. Further, in support of said allegations the Respondents have not place any document on record.

13. The Hon'ble Supreme Court in the Case of Kranti Associates (Supra) after considering many earlier judgments summarized the principles on the recording of reasons which are reproduced below:-

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).
- n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija Vs. Spain (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

14. In light of the principles laid down by the Hon'ble Supreme Court, we have examined the Impugned Order which is reproduced in Para- 4 of this order.

15. There is nothing in the order to justify the directions for conducting forensic audit of accounts of the Company that too for more than 15 years. The Adjudicating Authority must record reasons in support of conclusions. However,

in the Impugned Order no reasons are mentioned for the said directions. The order is cryptic and non-speaking; therefore, it cannot be sustained.

16. With the aforesaid discussions, we have no option but to set aside the Impugned Order.

The Appeal is allowed, however, no order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

New Delhi
27th May, 2021
SC