

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 176 of 2018

IN THE MATTER OF:

The Andhra Pradesh Housing Board

Its successor entity Telangana Housing Board
Through its Vice Chairman & Housing
Commissioner having its office at Gruhakalpa,
M.J Road, Nampally, Hyderabad

**...Appellant
(Original Respondent No.2)**

Vs

1. IJM(India) Infrastructure Ltd.

Reg. Office at 1-89/1,
Plot No. 42 and 43, 3rd & 4th Floor,
Phase-I, Kavuri Hills, Madhapur,
Hyderabad-500081, Telangana.
pavanb@ijm.com

**...Respondent No.1
(Original Applicant)**

2. M/s Swarnandhra IJMII

Integrated Township Development Company
Private Limited
Reg. Office at 1-89/1,
Plot No. 42 and 43, 3rd & 4th Floor, Phase-I,
Kavuri Hills, Madhapur,
Hyderabad-500081, Telangana.
harjeet@ijm.com

**...Respondent No.2
(Original Respondent No.1)**

3. Andhra Pradesh Housing Board, rep. by

Its Vice Chairman
D.No. 5-21, Beside Lakshmi Ford Show Room
Prasadampadu, Vijaywada-521108

**...Respondent No.3
(Original Respondent No.3)**

**For Appellant(s): Mr. Mithun Shashank and Mr. N. Harinath Reddy,
Advocates**

**For Respondent(s): Mr. Anil Kumar Chundururu, Advocate for Respondent
No.1.
Mr. Yogesh Raavi, Advocate for Respondent No. 2**

Oral Judgement

A.I.S. CHEEMA, J. :

26.09.2018: Heard Advocate Mr. N. Harinath Reddy for the Appellant and Advocate Mr. Anil Kumar Chundururu on behalf of the Respondent No.1 and Advocate Mr. Yogesh Raavi for Respondent No.2, who are present.

2. This Appeal arises out of the Impugned Order dated 27th February, 2018 passed by the Ld. National Company Law Tribunal, Hyderabad Bench at Hyderabad (NCLT-in brief) passed under Section 97 of the Companies Act, 2013 in CA 48/97/HDB/2017.

3. In this matter Respondent No.1 filed the Application under Section 97 of the Act seeking following reliefs:-

“a) excuse default in holding the 10th Annual General Meeting and direct Swarnandhara-IJMII Integrated Township Development Company Private Limited (SITCO) to hold its 10th Annual General Meeting of its members on a suitable date within 40 days from the date of the Order from this Tribunal u/s 97 of the Companies Act, 2013 for transacting business as contained in the draft notice of 10th Annual General Meeting read with explanatory statement u/s 102 of the Companies Act, 2013;

b) direct the service of notice for 10th Annual General Meeting together with the explanatory statement thereto and any adjourned meeting thereof to the shareholders of SITCO as per its Register of Members;

c) direct the attendance of Andhra Pradesh Housing Board represented by its successor entity, the Telangana Housing Board through its authorized person in person or by proxy at the 10th Annual General Meeting of SITCO and at any adjournment thereof

that may be directed by this Hon'ble Tribunal failing which, that one member of SITCO present in person or by proxy in the 10th Annual General Meeting and at any adjourned meeting thereof be deemed to be an Annual General Meeting of the Company duly called, held and conducted;

d) give such other incidental directions as the Hon'ble National Company Law Tribunal may deem fit”

4. It appears that Andhra Pradesh Housing Board (APHB -in brief) and Respondent No.1 IJM jointly promoted Respondent No.2 M/s. Swarnandhra IJMII Integrated Township Development Company (SITCO in short) for the purpose of developing integrated townships and allied construction and development works. It appears that between APHB and IJM some differences or disputes arose relating to certain expenditures before Financial Year 2011-12 because of which earlier in CA 2/167/2014 directions were given on 6th October, 2016 for holding 9th Annual General Board Meeting.

5. CA 48/97/HDB/2017 was filed with prayers as mentioned above to hold 10th AGM of Respondent No.2. The parties put up their respective contentions before NCLT. The Appellant (Original Respondent No.2) claimed it was successor to erstwhile Andhra Pradesh Housing Board after the split up of the State. It raised certain objections in respect of financial statements for Financial year 2011-12. Appellant informed Respondent No.2 SITCO that meeting of Board of Directors for approval of the financial statements for the year 2011-12 can only be conducted upon receipt of remarks from Original Respondent No.1 and upon appointment of fresh members on the Board by

Government of Telangana consequent to bifurcation of State of Andhra Pradesh and aggrieved by such communication CA was filed leading to earlier orders dated 6th October, 2016. The Appellant claimed that consequent to bifurcation of State of Andhra Pradesh the Appellant's nominees may not be able to attend either Board Meetings or Shareholders Meetings until fresh nomination of the Board Members by the Government are made.

6. The learned NCLT considered the rival cases put up by parties and also considered the provisions of the old Companies Act of 1956 as well as the new Companies Act of 2013 and the need to hold Annual General Board Meetings. The grievances put up by the Appellant were taken note of but still the directions to hold AGM were given.

7. The learned counsel for the Appellant submits that after Andhra Pradesh was split with effect from 2nd June, 2014 and the State of Andhra Pradesh and State of Telangana came into existence, the Appellant (Original Respondent No. 2) has to still nominate Director on the Board of Respondent No. 2 and this has not become possible due to the fact that the State has been recently split. It is stated that the Appellant is Statutory Housing Board and awaits directions from the Government of Telangana. It is stated that the Telangana Assembly has been recently dissolved and thus the Appellant has difficulty in participating in the AGM which is required to be held of Respondent no. 2 Company.

8. The learned counsel for the Respondents submitted that under the Companies Act it is necessary that the AGM should be regularly held and

Respondents do not want that the Respondent No.2 Company should be in default and because of this the Original Applicant (Respondent No.1) had moved the Application which NCLT after considering all aspects has allowed and directed holding of AGM.

9. The learned counsel for the Appellant is submitting that the Appellant has reservations regarding some accounts. However, the learned counsel for Respondents state, and rightly so, that although the Appellant may be having any grievance regarding the accounts the Appellant would be free at AGM to express its concerns which can be considered by the AGM at the time of adopting or otherwise, of the accounts.

10. In the directions given by NCLT, the operative directions appear to be in Para 24 sub paragraph (d) and (h) and read as under:-

“d) In view of the above background, we direct R2 to depute a nominee to attend Board Meeting, Shareholders meeting of R1 Company and if at all R2 has got any grievance, the same can be democratically discussed in the Board, Shareholders meeting. The Bench is also of the considered view that by mere not attending the Board Meeting, shareholders meeting, no purpose would be achieved by R2/R3 wherein there are only 2 shareholders.”

“(h) In the light of above discussion of the case, we allow the present application by excusing the default in holding 10th Annual General Meeting (AGM) by R1 Company and direct Swarnandhra IJMII Integrated Township Development Company Private Limited (SITCO) to hold 10th AGM within 60 days from the date of receipt of

copy of this Order, after duly serving statutory notice of 21 days to all the parties concerned, to receive, consider and adopt the audited accounts of the Company for the period ended 31st March, 2013 and the reports of the Directors and Auditors thereon. The Telangana Housing Board, the successor Board of previous APHB is directed to depute its nominee Director(s) to the said proposed Board/ AGM of SITCO so as to fulfill the required Quorum as per the Articles of Association and in accordance with law. The meeting shall be chaired by such person as provided in the relevant Articles of Association of the Company. We make it clear that the above directions are given in order to remove serious legal impediment coming in the way of running of the Company without convening 10th AGM as discussed above, without the prejudice to the rights of all the parties.”

11. We do not find any error in these directions given by NCLT for us to interfere with the same. The Appellant Board has to send its nominee to the Board of Respondent No. 2. It is for the Appellant itself to put its house in order. If it endlessly delays taking steps to ensure that nominee is selected and sent, AGMs of Respondent No. 2 cannot remain suspended. If not already compiled the Orders of NCLT need to be complied urgently. The Appellant may take any suitable steps to get the required directions from the relevant authorities in the Government but the orders as given by NCLT are required to be carried out considering the provisions of the Companies Act which make it necessary for the Company to hold the AGM regularly. Appellant is directed to depute a nominee urgently, as per directions given in the Impugned Order.

Appellant will be free to raise its grievances in the Board/ AGM Meetings as per law.

12. We do not find any reason to interfere with the Impugned Order. The directions given by NCLT be implemented by parties. The period of 60 days as mentioned in Impugned Order (See Para 10 supra) be calculated from the date of this Order, i.e. 26th September, 2018. The Appeal is disposed off accordingly with observations as made above.

13. Registry to immediately send copies of this Order to NCLT and parties.

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

(Balvinder Singh)
Member (Technical)

sh/nn