

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 210 of 2019

[Arising out of Impugned Order dated 02nd August, 2019 passed by the Hon'ble National Company Law Tribunal, Hyderabad Bench, in C.P. No.574/241/HDB/2018]

IN THE MATTER OF:

**Elaine Info Solutions Pvt. Ltd
Having its Office at:
8-2-684/3/K 68 & 69, Road No.2
Banjara Hills, Hyderabad
Telangana - 500034**

...Appellant

Versus

- 1. M/s J&A Avenues India Private Limited
House No.1, Door No.1-61/BV/1
Lalitha Bloom Field, Khajaguda
Serilingampally, Hyderabad - 500008** **...Respondent No.1**
- 2. Mrs. Vishnumolaka Govardhanamma
W/o Late V. Pichaiah
R/o 1-50/1, Allavaripalem, Opp. Post Office
Charukpalli, Gudavali, Guntur - 522259** **...Respondent No.2**
- 3. Mr. V. Lakshmi Chenuchu Venkata
Siva Prasad Satya
R/o Flat No.604-A, Land Mark Residency
Madinaguda, Serilingampally Municipality
Hyderabad** **...Respondent No.3**
- 4.Sub-Registrar
Sangareddy (R.O)
Door No.4-8-38/A&B,
Manjeera nagar, Sangareddy 502001-** **....Respondent No.4**

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate, Mr. Swapnil Gupta, Mr. Rudrajit Ghosh, Ms. Diksha Gupta, Mr. Kauser Hussain, Advocates

For Respondent : Mr. Saurabh Jain with Mr. Smarth, Mr. Bhavishya Singh, Advocates for R1 & R2.

With

Company Appeal (AT) No. 246 of 2019

IN THE MATTER OF:

**Mr. V. Lakshmi Chenchu Venkata
Satya Siva Prasad
Flat No. 604-A, Land Mark Residency
Madinaguda, Serilingampally Municipality
Hyderabad.**

...Appellant

Versus

- 1. M/s J&A Avenues India Private Limited
House No.1, Door No.1-61/BV/1
Lalitha Bloom Field, Khajaguda
Serilingampally, Hyderabad - 500008** **...Respondent No.1**
- 2. Mrs. Vishnumolaka Govardhanamma
W/o Late V. Pichaiah
Aged about 82 years
1-50/1, Allavaripalem, Opp. Post Office
Charukupalli, Gudavali, Guntur - 522259** **...Respondent No.2**
- 3. Elaine Info Solutions Private Limited
8-2-684/3/K 68 & 69, Road No.12
Banjara Hills, Hyderabad
Telangana - 500034** **...Respondent No.3**
- 4. Sub-Registrar
Sangareddy (R.O.)
Door No.4-8-38/A&B
Manjeera Nagar, Sangareddy - 502001** **...Respondent No.4**

Present:

For Appellant : Mr. M.L. Sharma with Mr. Rishabh Jain, Advocates

**For Respondent : Mr. Arun Kathpalia, Sr. Advocate, Mr. Swapnil Gupta,
Mr Rudrajit Ghosh, Ms. Diksha Gupta, Mr Kauser
Hussain, Advocates for R3.
Mr.Saurabh Jain with Mr. Smarth, Mr. Bhavishya
Singh, Advocates for R1 & R2.**

With

Company Appeal (AT) (Insolvency) No. 258 of 2019

IN THE MATTER OF:

Versus

- 1. M/s J&A Avenues India Private Limited & Ors.
House No.1, Door No.1-61/BV/1
Lalitha Bloom Field, Khajaguda
Serilingampally, Hyderabad – 500008** **...Appellant No.1**
- 2. Mrs. Vishnumolaka Govardhanamma
W/o Late V. Pichaiah
Aged about 82 years
1-50/1, Allavaripalem, Opp. Post Office
Charukpalli, Gudavali, Guntur - 522259** **...Appellant No.2**

Versus

- 1. Mr. V. Lakshmi Chenchu Venkata
Siva Prasad Satya
Flat No.604-A, Land Mark Residency
Madinaguda, Serilingampally Municipality
Hyderabad** **...Respondent No.1**
- 2. Elaine Info Solutions Private Limited
8-2-684/3/K 68 & 69, Road No.12
Banjara Hills, Hyderabad
Telangana – 500034** **...Respondent No.2**
- 3. Sub-Registrar**

**Sangareddy (R.O.)
Door No.4-8-38/A&B
Manjeera Nagar, Sangareddy – 502001**

...Respondent No.3

Present:

For Appellant : Mr.Saurabh Jain with Mr. Smarth, Mr. Bhavishya Singh, Advocates

For Respondent : Mr. Arun Kathpalia, Sr. Advocate, Mr. Swapnil Gupta, Mr Rudrajit Ghosh, Ms. Diksha Gupta, Mr Kauser Hussain, Advocates for R2.

J U D G M E N T

(18th March, 2020)

Dr. Ashok Kumar Mishra, Technical Member

1. The Present set of Appeals are preferred under section 421 of the Companies Act, 2013 against a common impugned order dated 02.08.2019 of the National Company Law Tribunal Hyderabad Bench, Dated 2nd August 2019 passed in CP No. 574/241/HBD/2018 and are accordingly disposed of through this common judgment. The National Company Law Tribunal in C.P. No. 574/241/HDB/2018 has passed the order covering alleged impugned Board Resolution of Board Meeting dated 01st August, 2015 as well as registration of document for land measuring 9 Acres 18 Guntas with the Sub-Registrar as specified in the petition as null and void.

Direction has also been given to Sub-Registrar to cancel the impugned registered document dated 04th September, 2015 directing them to restore the name of impugned property in the name of M/s J&A Avenues India Private Limited and has also directed the said Company to return the money of Rs.4,36,50,000/- (Rupees Four Crores Thirty Six Lacs Fifty Thousand only) with interest @ 8% per annum from the date of receipt of the amount till repayment of the same. The direction has also been given that Mr. V. Lakshmi Chenuchu Venkata Siva Prasad Satya has received a sum of Rs.7,91,00,000/- (Rupees Seven Crores Ninety One Lacs only) from Mr. Y. Naga Satish as part of sale consideration of the subject property and he has utilised it further for the Company i.e. M/s J&A Avenues India Private Limited. Accordingly, Mr. V. Lakshmi Chenchu Venkata Siva Prasad Satya and Mr. M/s J&A Avenues India Private Limited are also directed to return the same to Mr. Y. Naga Satish with interest @ 8% per annum from the date of receipt for the said amount within a period of 60 days. It has also been directed to declare Mr. V. Lakshmi Chenchu Venkata Siva Prasad Satya unfit person to hold the post of Director of M/s J&A Avenues India Private Limited and he has been barred from the Directorship of the said Company for a period of 5 years from the date of this order and M/s J&A Avenues

India Private Limited has also been directed to convene extraordinary general meeting within a period of 60 days to give effect to the direction issued in this order and also to appoint a new Director in place of Mr. V. Lakshmi Chenchu Venkata Siva Prasad Satya in accordance with the provisions of Companies Act etc.

2. Aggrieved by the above order three Appeals have been filed separately under Section 421 of the Companies Act, 2013 against the common order dated 2nd August, 2019. The same along with the Appeal numbers are depicted below:

- I. In the Company Appeal (AT) No.210 of 2019, the Appellant is Elaine Info Solutions Private Limited and Respondents are (i) M/s J&A Avenues India Private Limited (ii) Mrs. Vishnumolaka Govardhanamma and (iii) Mr. V. Lakshmi Chenchu Venkata Siva Prasad Satya.
- II. In the Company Appeal (AT) No.258 of 2019 the Appellant No.1 is M/s J&A Avenues India Private Limited and the Appellant No.2 is Mrs. Vishnumolaka Govardhanamma. The Respondent No.1 is Mr. V. Lakshmi Chenchu Venkata Siva Prasad Satya, Respondent No.2 is Elaine Info Solutions Private Limited and Respondent No.3 is Sub-Registrar

Sangareddy (R.O.) who is found to be unrepresented herein this present Appeal.

- III. Company Appeal (AT) No.246 of 2019 in this case, the Appellant is Mr. V. Lakshmi Chenchu Venkata Siva Prasad Satya and Respondent No.1 is M/s J&A Avenues India Private Limited. Respondent No.2 is Mrs. Vishnumolaka Govardhanamma and Respondent No.3 is Elaine Info Solutions Private Limited and Respondent No.4 is Sub-Registrar Sangareddy (R.O.).

Hereinafter in this judgment Elaine Info Solutions Private Limited is referred to as Appellant and M/s J&A Avenues India Private Limited as Respondent No.1 Company, Mrs. Vishnumolaka Govardhanamma as Respondent No.2 and Mr. V. Lakshmi Chenchu Venkata Siva Prasad Satya as Respondent No.3. Respondent No.4 is Sub-Registrar Sangareddy (R.O.) who is unrepresented in these Appeals.

- 3. Accordingly, the order is disposed of though common judgment and Appellants and Respondents are defined as given above in order to have clarity in reading the judgment.**

4. The Appellant submits that the Respondent No.3 [Appellant in C.A. No. 246 of 2019 hereinafter referred to as Respondent No.3] approached the Appellant for the purpose of selling a part of Respondent No.1 Company's Property admeasuring Acres 9-18 Guntas ("Subject Property"), and the Appellant purchased the same for consideration of Rs. 4,36,50,000 and executed a registered sale deed No. 15747/2015 dated 04.09.2015. The Appellant further submits that the Respondent No.3, who was admittedly a 50% shareholder and one of the two directors of Respondent No.1 Company, represented to the Appellant that he was authorized to execute the Sale Deed on behalf of Respondent No.1 Company and produced a certified true copy of a Board Resolution dated 01.08.2015 duly signed by Respondent No.2[Appellant No.2 in C.A. No. 258 of 2019] who is the mother of Respondent No.3 and the only other director in the company, to sell the Subject Property on behalf of Respondent No.1 Company. The Appellant submits that he further entered into an agreement for sale of the Subject Property with Anirudh Agro Farms Pvt Ltd. and VBS Builders and Developers and executed a General Power of Attorney in favor of Anirudh Agro Farms Pvt. Ltd.

5. The Appellant submits that the Respondent No. 2 filed Petition CP No. 574/241/HBD/2018 under Section 241 of the Companies Act, 2013, after more than three years had lapsed since the registration of the Sale Deed, alleging Oppression and Mismanagement of affairs of Respondent No.1 against Respondent No.3 on the ground that the sale of the subject Property by Respondent No.3 was illegal and without authority. It is further submitted that the NCLT passed an interim order restraining the Appellant and Respondent No.3 from dealing with/alienating the assets of Respondent No.1 Company including the Subject Property admeasuring 9-18 Guntas as described in Sale Deed No. 15747/2015 dated 04.09.2015. The Appellant filed an Application for Vacation of Stay order dated 09.10.2018 passed by the NCLT restraining the Appellant from dealing with/alienating the Subject land. The NCLT disposed of Petition CP. No.574 /241 /HBD /2018 holding that the Board Resolution dated 01.08.2015 and Registered sale Deed No. 15747/2015 dated 04.09.2015 to be null and void. The Appellant submits that the Petition was barred by limitation as it was filed more than three years after the registration of sale deed on 04.09.2015. The Appellant further submits that the NCLT has confused the transaction between Respondent No.1 and Respondent No.3 Companies relating to subject property with

another separate transaction between Mr. Naga Satish and Respondent No.3's own property and that the two transactions are completely different.

6. The Respondent No. 1 and Respondent No.2 herein have also preferred the Company Appeal No. 258 of 2019 to a limited extent i.e. to set aside the impugned order to an extent that vide order dt. 02.08.2019 the Respondent No.1 Company herein is directed to return an amount of Rs. 4,36,50,000/- along with interest @ 8% to the Appellant. The amount of 7,91,00,000/- is also directed to be returned to Mr. Y Naga Satish with interest @ 8% per annum by Respondent no.1 Company and Respondent No.3 from the date of receipt of the said amount. The Respondent no.2 further submits that as per the direction vide order dated 02.08.2019, the illegal sale deed NO. 15747 of 2015 dated 04.09.2015 was cancelled on 07.08.2019 and Respondent No.3 was removed as the director of the Respondent No.1 Company and Ms. Degala Raja Rajeshwari has been appointed as the director of the Respondent No.1 Company.
7. It is submitted that Respondent No.3 in collusion with the Director of Appellant has transferred a part of the land admeasuring Acres 9-28 Guntas (however in the impugned order dated 02.08.2019 the same was mentioned as Acres 9-18 guntas due to typographical error) to Appellant vide illegal

sale deed No. 15747 of 2015 dated 04.09.2015 acting on a forged board resolution allegedly held on 01.08.2015. The Respondent No.2 is not aware of any such Board Meeting held on 01.08.2015 nor received any notice calling such meeting of the Board of Directors. It is further submitted that the said Respondent No.3 has suppressed the illegal sale of the land in the financial statement thereby filed false statement with the Registrar of Companies which is in violation of the Provisions of Companies Act, 2013. It is submitted that Respondent No.2 who is the other director of Respondent No.1 Company has unknowingly signed the false financial statements as she was not aware of the illegal sale. The Respondent no.2 questioned the Appellant how it acted on a copy of the resolution provided without asking for original and alleges that the Appellant has not performed due diligence before buying the subject property.

8. Company Appeal No.246 of 2019 is filed by Respondent No.3 to set aside the order dated 02.08.2019 as passed by the NCLT , Hyderabad in CP No. 574/241/HBD/2019 whereby the Respondent No.3 and has been directed to return an amount of 7,91,00,000/- along with @ 8% interest received by the Respondent no.3 against the sale of land in sale deed No.15747/2015 dated 04.09.2015 to Mr. Y Naga Satish and also against the finding of the Tribunal

that Respondent No.3 shall not hold office of the Director in Respondent No.1 Company for a period of five years. Respondent No.3 submits that the amount so received was used for the purpose and benefit of the Respondent No.1 Company and its shareholders. It is submitted by him that the Tribunal erred in declaring that there was no board meeting dated 01.08.2015.

9. With regard to the plea of Limitation, Respondent No.2 has alleged that the Board Resolution dated 01.08.2015, is a fake and fabricated document and that a fraud is played on Respondent No.2. As per Section 17(1)(b) of the Limitation Act, 1963, in case of fraud, the period of Limitation would run from the date of knowledge of fraud.

17. Effect of fraud or mistake.—

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) *the suit or application is for relief from the consequences of a mistake; or*

(d) *where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production: Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—*

(i) *in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or*

(ii) *in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or*

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

10. Respondent No.2 became aware about the said sale of land a month prior to the date of petition when some people started to come and see the land. Only after verification, the Respondent No.2 became aware of the fact that the said land has been transferred to Appellant by false Board Resolution passed in the meeting that never took place. The Appellant has failed to adduce any evidence relating to the presence of Respondent no.2 at the Board Meeting held on 01.08.2015. Therefore, in terms of the provisions of section 17 of the Limitation Act, 1963, the petition was filed by Respondent No.2 within time and is not barred by limitation.

11. We observe herein that Audit Report and relevant financial statement is not reflecting sale of the said land. No board meeting dated 01.08.2015 was held as per the annual return (2015-2016) of the company. Moreover, due diligence was not done by the appellant to verify that the board resolution was passed on 01.08.2015. The original board resolution was not shown to the Appellant and he purchased the land on the basis of certified copy of the

board resolution. The impugned property is in mother's control. Annual return filed on 02.09.2016 clarifies that no board meeting was held on 01.08.2015. Nothing in this regard was also mentioned in AGM notice dated 02.09.2016. Under Schedule 5 of Balance Sheet no details for sale of land is reflected. Balance Sheet has been filed in Case no.258 of 2019 at page 215. The object of the company has been as given in Memorandum of Association of the company mentioned on page 69 of the said Petition. According to the Memorandum of Association the object of the company is to carry on the business as contractors, sub-contractors, quasi-contractors, builders and developers relating to construction, removal, redecoration, modification, repairing etc of civil work, building and to carry on business activities of development of land, colonies, sheds, buildings etc. No profit or loss is reflected in the profit and loss account for the financial year 2015-2016 in respect of sale of land. Whereas in Balance Sheet, value of fixed asset has gone up from Rs. 67.29 million to Rs.76.83 million approximately. Only agricultural land is shown as fixed assets. A perusal of financial statement shows that balance sheet is at historical cost basis and not on replacement cost basis apparently, hence there may be purchase of land & not sale of land as reflected under "Fixed Assets" in Balance Sheet. Sale of

the property of a company requires board resolution to that effect. The sale alleged to have been executed is only on the basis of board resolution dated 01.08.2015 which itself cannot be relied upon. Therefore, the sale of the said land seems to have been executed without proper authorization of the board. We uphold the order of NCLT, Hyderabad and accordingly dispose of the present Appeals.

**[Justice Jarat Kumar Jain]
Member (Judicial)**

**[Mr. Balvinder Singh]
Member (Technical)**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

NEW DELHI

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