

**NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH**
(through web-based video conferencing platform)

**Item No. 106
CP No. 07/241-242/JPR/2024
Under Section 241-242 of
Companies Act, 2013**

In the matter of:

Jagdish Tambi & Ors.

...Petitioners

Versus

M/s Ksheer Sagar Developers Pvt. Ltd. & Ors.

...Respondents

**Coram: HON'BLE MR. DEEP CHANDRA JOSHI,
JUDICIAL MEMBER
HON'BLE MR. RAJEEV MEHROTRA,
TECHNICAL MEMBER**

Present Through Video Conferencing: -

For Petitioner(s) : Sandeep Taneja, Adv.
For Respondent(s) : Kamalakar Sharma, Sr. Adv.
Rishabh Khandelwal, Adv.

ORDER

1. The present petition has been filed under Section 241-242 of the Companies Act, 2013 seeking the following set of interim reliefs:

- a. Call for immediate submission of the minutes books of Respondent No. 1 for all the meetings held of the Board of directors and shareholders from incorporation till the date of filing this instant petition along with the video recording of such meetings;*





- b. *To stay the resolution for appointment of Respondent No. 5 (Mr. Haripal Singh Uberoi) as independent director of M/s Ksheer Sagar Developers Pvt. Ltd. ('KSDPL') (CIN- U45201RJ1995PTC010120) and restraint them from interfering into the affairs of KSDPL;*
- c. *To stay the Resolutions passed in the Board Meeting dated 08.02.2024 for appointment of Respondent No. 5 and Mr. Pavanjeet Singh Sandhu for calling the EOGM for making such appointment.*
- d. *To appoint two independent directors on the Board of M/s Ksheer Sagar Developers Pvt. Ltd. from the database of independent directors maintained by the MCA;*
- e. *To restrain the Respondent from conducting EOGM on 01.03.2024 for appointment of proposed, independent directors;*
- f. *To pass necessary directions restraining the Respondent No. 3, i.e., Chairman of KSDPL from participating into the affairs of the company being an Interested Director;*
- g. *To restrain Respondent No. 3 from participating and voting in the board meetings, General Meeting and other affairs of KSDPL;*
- h. *To stay the appointment of Respondent No. 6 (Mr. Ramandeep Singh Bawa) as the Additional Director of KSDPL and restraint him from interfering into the affairs of KSDPL;*
- i. *To pass necessary directions for conducting Forensic Audit of KSDPL by the Auditor appointed by the Hon'ble Tribunal;*
- j. *Restrain the Respondents from affecting any change in the composition of Board of Directors of the Company and in the shareholding pattern of the respondent company;*
- k. *To order the Respondents not to conduct any meeting of the Board of shareholders without involving the Petitioners;*

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- l. To direct the Respondents to conduct the affairs of KSDPL by strictly complying with all the statutory compliances;*
- m. Appropriate order may kindly be passed for carrying out investigation of the affairs of the Company KSDPL;*
- n. To direct the respondents to distribute the available funds of the Respondent company in adherence to the procedure of law and to devise the mechanism for dealing with the surplus generated from the business carried out by the Company;*
- o. To appoint the administrator to manage the affairs of the Company and to observe the Board meetings of the Company during the pendency of the present petition.*
- p. To direct the respondents to comply with all the requirements of the corporate governance by considering M/s Ksheer Sagar Developers Pvt. Ltd. to be a deemed public company;*
- q. To direct the Respondents No. 2, 3, & 4 to give complete account of the amount received in the account of ROHL and also account of the amount adjusted therefrom till the date of filing of the present petition.*
- r. Pass any order as this Tribunal may deem fit and proper in interest of justice.*

2. It is seen that the position of the parties to the case *vis-a-vis* their shareholding and directorship in the present matter is as below:

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Present shareholding structure of the Company as alleged by the Petitioners:

Sr. No.	Name	No. of shares held	Amount in lakhs	% of share
1.	Royal Orchid Hotels Ltd.	2,99,99,996	3,000/-	50%
2.	Royal Orchid Goa Pvt. Ltd.	1	0	
3.	Royal Orchid Jaipur Pvt. Ltd	1	0	
4.	Royal Orchid Associated Hotels Pvt. Ltd.	1	0	
5.	A B Holding Pvt. Ltd.	1	0	
6.	Mr. Ratnesh Tambi	5,50,402	525.04	8.75%
7.	Mr. Rupesh Tambi	52,93,251	529.33	8.82%
8.	Mr. Rajesh Tambi	51,11,141	511.11	8.52%
9.	Mr. Jagdish Tambi	39,42,957	394.30	6.57%
10.	Ms. Sumitra Tambi	35,57,043	355.70	5.93%
11.	Ms. Kajri Tambi	22,06,749	220.67	3.98%
12.	Ms. Mamta Tambi	23,88,859	238.89	3.68%
13.	Ms. Neha Tambi	22,49,598	224.96	3.75%
Total shares held by Tambi Group				50%
Total		6,00,00,000	6,000	100%

The details of Directors/ Signatory of the M/s Ksheer Sagar Developers Pvt. Ltd. as available on the MCA website as on 29.02.2024 are as follows:

Sr. No	DIN/PAN	Name	Designation	Date of Appointment	Cessation Date	Signatory
1	00191630	RAJESH TAMBHI	Director	30/05/1995	-	Yes
2	06533851	PERKIN ROCHA	Director	31/07/2019	-	Yes
3	09151209	SHARAD UMESHCHANDR A SHUKLA	Director	02/03/2022	-	Yes
4	00191599	RUPESH TAMBHI	Managing Director	27/05/2016	-	Yes

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5	01262 337	HARIPAL SINGH UBEROI	Director	02/03/2022	-	Yes
6	03448 511	AMIT JAISWAL	Director	01/12/2014	-	Yes
7	***** 8996H	PARUL AGARWAL	Company Secretary	01/11/2022	-	Yes
8	00015 510	RAMANDEEP SINGH BAWA	Additional Director	28/10/2023	-	Yes

3. The Petitioners are the family members (hereinafter referred to as “Tambi Group”) and are also the promoters of KSDPL. Mr. Rupesh Tambi i.e., Petitioner No. 4 is the Managing Director of KSDPL.
4. It is observed that the Respondent No. 1 i.e., *M/s Ksheer Sagar Developers Private Limited* having CIN U45201RJ1995PTC010120 is a company incorporated on 30.05.1995 under the provisions of the Companies Act, 1956 and registered with ROC Jaipur. The Authorised Share Capital of the Company is Rs. 60 Crores and the paid-up Share Capital is Rs. 60 Crores. The same has been verified from the online database maintained by the Ministry of Corporate Affairs.
5. Respondent No. 2 i.e., *Royal Orchid Hotels Limited* (‘ROHL’) is a Public Limited Company having CIN: L55101KA1986PLC007392, registered with ROC Bangalore. The same has been verified from the online database maintain by the Ministry of Corporate Affairs.

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6. The Petitioners submitted that ROHL owns 50% of the shareholding in KSDPL and Mr. Amit Jaiswal i.e., Respondent No. 3 is presently the Chairman of KSDPL who is appointed by ROHL.
7. It is noted that the Petitioner satisfies the threshold for filing the Application as prescribed under Section 241-242 of the Companies Act, 2013, as they hold 10% shares in the Respondent Company. Further the Petitioner has also raised averments concerning strained relationship amongst the shareholders leading to instances of oppression and mismanagement on the part of Respondents. The parties were heard on 28.02.2024 and 29.02.2024 regarding grant of interim reliefs, if any to be considered in this matter, especially on items being considered for EGM proposed to be held on 01.03.2024, which may adversely affect the Petitioners. The Petitioners have also raised several corporate governance issues including non-existence of Audit Committee, Nomination and Remuneration Committee despite the company having Independent Directors.
8. The Petitioners submitted that on 08.02.2024, KSDPL issued notice for First Extra Ordinary General Meeting to be held on 01.03.2024 to all its members. In the list of Special Businesses to be dealt in EGM, the Item No. 2 specifies that:

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“To Re-appoint Mr. Haripal Singh Uberoi as an Independent Director of the Company and in this regard to consider and, if thought fit, to pass, with or without modification(s), the following resolution as an Ordinary Resolution”

The Petitioners further submitted that the appointment is not in parlance with Section 149(10) of the Companies Act, 2013 which states that in order to reappoint Independent Director the company shall pass a Special Resolution. However, the Agenda Item No. 2 provides for re-appointment of the Independent Director via Ordinary Resolution, and therefore, is violative of Section 149(10) of the Companies Act, 2013.

9. The Petitioners also submitted that during the Board Meeting held on 08.02.2024, Mr. Amit Jaiswal, Chairman sought suggestions from the Board of Directors concerning appointment of the Independent Directors. In response to the suggestions sought by the Chairman, *Mr. Haripal Singh Uberoi*, Independent Director, presented the profile of *Mr. Pavanjeet Singh Sandhu* for the post of Independent Director. Despite objections and dissent by the Nominee Directors of the Petitioners, this appointment is proposed to be taken to the EGM on 01.03.2024 as Item No. 1 under Special Business. On further scrutiny, it was found that neither any agenda item along with his background

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was circulated to the Directors before the Board Meeting nor the consent given by the person proposed for the directorship, reportedly dated 07.02.2024 addressed to the Board of Directors of KSDPL was shared with any Directors of the Petitioners group. Despite objections by the Petitioners Directors in this regard, how such an item is being taken up under any other item without any due notice, the Respondents with their majority have approved this item. Now this item of new appointment has been included in the agenda of the EGM. This also shows the oppressive working style of the Respondents.

10. Further, the Petitioners contended that the appointment of the Independent Directors in the proposed EGM scheduled for 01.03.2024 will adversely affect the interest of Petitioners. Therefore, the Petitioners requested to restrain the Respondents from conducting EGM for re-appointment of proposed Independent Director.
11. The counsel of the Respondent denied all the averments of the Petitioners and submitted that the reliefs sought are in the nature of final reliefs which have been disguised in the form of interim reliefs. Further, he contended that the relief sought are pre-mature as the EGM is yet to be held. Further assured this Tribunal that the Company shall comply with the provisions of the Companies Act as applicable.

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12. We have heard the counsel for the parties at length, arguments advanced and perused the documents placed on record.
13. It is pertinent to mention the judgment of Apex Court in the case of *Life Insurance Corporation of India vs. Escorts Ltd. & Ors.*, (1986) 1 SCC 264, wherein it was held that courts must remain slow in interfering with exercise of democratic rights of the majority shareholders in dealing with the affairs of the company. It was held that the action of the Life Insurance Corporation of India in issuing the requisition notice dated 11.02.1984 to hold an extra ordinary general meeting of the Escorts Company Ltd. for the purpose of removing nine of the part time Directors of the company and for nominating nine others in their place is neither contrary to the provisions of section 284 of the Companies Act, 1956 nor ultra vires the powers vested in the Life Insurance Corporation of India Act. The notice does not offend the principle of natural justice. The said action of the LIC cannot be said to be arbitrary and mala-fide and taken for collateral purpose or violative of Article 14 of the Constitution of India.
14. It seems that the Petitioners have preferred the present petition with an apprehension that after appointment of the Independent Directors as proposed in the EGM in the Respondent No. 1 Company, it may result into change in the balance of power within the Respondent No. 1 Company. However, the apprehension of the Petitioners cannot be taken as an argument to flout the

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principles of corporate governance and independent functioning of the Board of Directors and Shareholders.

15. Therefore, in the present set of circumstance, we are not passing any order so as to restrain the Respondents from convening the EGM as scheduled, but the following directions in line with provisions of Companies Act, 2013 have to be complied with:

15.1 Any re-appointment of an Independent Director should be made through a Special Resolution in compliance with provisions of Section 149(10) of the Companies Act, 2013 and Secretarial Standards in this regard issued by the Institute of Companies Secretaries of India ('ICSI').

15.2 Appointment of any new Independent Director should first be approved by Board of Directors, with due notice and compliance with the provisions of Section 149(6) and Section 178(2) of the Companies Act, 2013 and Secretarial Standards of ICSI in this regard.

15.3 It is further clarified that any decision taken in the EGM for appointment of Independent Directors will be subject to the outcome of the CP No. 07/241-242/JPR/2024 in the present matter under consideration of this Tribunal.

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16. Issue notices in the matter to the Respondents. The Respondents are directed to file a reply to the main petition within 2 weeks with an advance copy to the Petitioners. List the matter on 20.03.2024.

Sd-

(Rajeev Mehrotra)
Technical Member

February 29, 2024

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(Deep Chandra Joshi)
Judicial Member