

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.A. 90 OF 2024

Under Rule 11 of NCLT Rules, 2016

Mr. Om Prakash Agarwal Others

...Applicants

...Respondents

C.A. 92 OF 2024

Under Rule 11 of NCLT Rules, 2016

Mr. Om Prakash Agarwal Others

...Applicants

V/s

GEE Limited & others

...Respondents

In the matter of

C.P. No. 306/MB/2023

Mr. Om Prakash Agarwal Others

...Petitioners

V/s

GEE Limited & others

...Respondents

Order delivered on: 09.05.2024

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 90 OF 2024
C.A. 92 OF 2024
In
C.P. No. 306/MB/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Manvendra Kane a/w
Ms. Amruta Thakure,
Advocates

For the Respondent : Mr. Aayesh Gandhi,
Respondent No. 2 & 3

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Petition CA 90/2024 is filed on 19.03.2024 by Mr. Omprakash Agarwal & others, ("Applicant") under Rule 11 of NCLT Rules, 2016 seeking
 - a. This Hon'ble Tribunal may be pleased to permit the Petitioners to amend the Company Petition in terms of the Schedule A annexed hereto;
 - b. Pending hearing and final disposal of the present Company Application the Respondents or any other persons acting through them be restrained from utilising any funds/resources of the Company to make any further investments or payments including any capital expenditure, which are otherwise not in the usual course of business, without obtaining prior approval from this Hon'ble Tribunal;

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 90 OF 2024
C.A. 92 OF 2024
In
C.P. No. 306/MB/2023

- c. Pending hearing and final disposal of the present Company Application the Respondents may be restrained from utilizing any funds of the Company towards upgrading or developing any immovable assets of the Company, without obtaining prior approval from this Hon'ble Tribunal;
 - d. The Respondent Nos. 2 and 3 may be directed to return back to the Respondent No. 1 Company, the funds, aggregating to INR 1 7,40,00,000 that were unauthorizedly utilized by the said Respondents to purchase the lands at Howrah and Bhiwandi, West Bengal;
2. This Company Petition CA 92/2024 is filed on 31.03.2024 by Mr. Omprakash Agarwal & others, ("Applicant") against GEE Limited under Rule 11 of NCLT Rules, 2016 seeking
- a. This Tribunal may be pleased to permit the Petitioners to amend the Company Petition in terms of the Schedule A annexed hereto;
 - b. This Tribunal be pleased to set aside the following resolutions passed at the Board Meeting of Respondent No.1 Company held on March 18, 2024 being null and void:
 - i. appointment of Respondent No.2 as Whole Time Director of the Company;
 - ii. appointment of Respondent No.3 as the Managing Director of the Company and;
 - iii. appointment of Mis. R. Dokania & Co. as the statutory auditor of the Company for five years.
 - c. Pending the hearing and final disposal of the present Company Application, this Hon'ble Tribunal be pleased to stay the effect and implementation of the following resolutions passed at the Board Meeting of Respondent No. I Company held on March 18, 2024:

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 90 OF 2024
C.A. 92 OF 2024
In
C.P. No. 306/MB/2023

- i. Appointment of Respondent No.2 as Whole Time Director of the Company;
 - ii. appointment of Respondent No.3 as the Managing Director of the Company and;
 - iii. appointment of Mis. R. Dokania & Co. as the statutory auditor of the Company for five years
- d. Pending the hearing and final disposal of the present Company Application, this Tribunal be pleased to stay the following agenda items proposed at the 62nd AGM of the Company scheduled to be held on April 12, 2024:
- (i) Agenda item 8: appointment of Respondent No.2 as Whole Time Director of the Company;
 - (ii) Agenda item 7: appointment of Respondent No.3 as the Managing Director of the Company and;
 - (iii) Agenda item 2: ratification and confirmation of Mis. R. Dokania & Co. as the statutory auditors of the Company;
 - (iv) Agenda item 3: appointment of Mis. R. Dokania & Co. as the statutory auditors of the Company for five years
- e. Pending the hearing and final disposal of the present Company Application, the Respondent Nos. 2 and 3 be restrained by an order and injunction of this Tribunal from utilizing the funds of Respondent No. I Company to meet legal expenses incurred by them in their individual capacity. t) That this Hon'ble Tribunal be pleased to direct Respondent Nos.2 and 3 to return back to the Respondent No. I the funds aggregating to INR 10 Crores that were unauthorizedly utilized by the said Respondents to purchase the land at Howrah, West Bengal.

3. GEE Limited, ("Respondent No. 1") is family-controlled public listed company whose shares are listed on Bombay Stock Exchange ("BSE"). The Company is engaged in the business of manufacturing welding electrodes and allied equipment and appliances. Around 36% of the equity in the Company is held by the public while remaining being divided within the promoter group.

3.1. The Applicants / Original Petitioners have filed the Company Petition ("Petition") seeking reliefs contained more particularly therein. The Applicants were then constrained to file a Company Application, being Company Application No. 504 of 2023 ("First CA") seeking urgent ad interim and interim reliefs on account of the rapidly increasing oppressive and highhanded manner of management of the Company at the behest of Mr. Shankarlal Agarwal ("Respondent No.2") and Mr. Sanwormal Agarwal ("Respondent No.3").

3.2. By an Order dated December 21, 2023, passed in the First CA, the Annual General Meeting of the Company, inter alia, to approve the financials for FY 2022-23, which was subsequently ordered to be held on under the chairmanship of Independent person appointed by this Tribunal.

3.3. The efforts to mediate between the parties have failed and the applicant seeks intervention of this Tribunal mainly on the ground that both the promoter group have two directors each on the Board, and the Respondent group has advantage in holding Chairman post on account of casting vote available to it.

- 3.4. The Applicants are filing the present Application to seek urgent relief against continuing instances of oppression faced after the filing of the First CA.
- 3.5. Petitioner Nos. 1 and 2 are the Whole-Time Directors having a shareholding of 4.19% and 6.03% respectively in the Company and Petitioner No. 3 is the Chief Financial Officer ("CFO") of the Company having a shareholding of 1.02% in the Company (Petitioner No. 1, 2 and 3 may hereafter be collectively referred to as "Petitioners"). Respondent No. 2 is the Chairman of the Company, having a shareholding of 7.170% in the Company, and Respondent No. 3 is the Managing Director of the Company, having a shareholding of 5.453% in the Company. Respondent Nos. 3 to 7 are the present independent directors of the Company. Respondent No. 8 is the erstwhile statutory auditor of the Company who was constrained to resign in October 2023. Respondent No. 9 and 10 are the Registrar of Companies and the Ministry of Corporate Affairs, Government of India, and have been made proforma parties under the Company Petition.
- 3.6. After the filing of First CA on December 11, 2023 and the Company Petition being listed before this Tribunal, a Notice dated December 6, 2023 came to be issued by the Company to schedule a meeting of the Board of Directors on December 13, 2023. The Chairman of the Company, i.e., Respondent No.2 in blatant disregard of corporate governance principles, used his casting vote to approve the Unaudited Financial Results for the quarter ended on June 30, 2023. It was thus evident that the

Respondents once again sought to muzzle the voice of the Petitioners knowing fully well that the casting vote of the Chairman could be misused in furtherance of this objective. It is pertinent that when the Petitioners sought the data on the basis of which the unaudited financial statements were prepared during the course of the meeting, the same was refused.

- 3.7. It is also relevant to note that the funds which have been mobilized for the purchase of immovable property have been utilized from a cash credit facility sanctioned by one the Company's lenders, HDFC Bank, since the Company, to the knowledge of the Petitioners does not otherwise have sufficient reserves of the amount transferred to Patton International Limited. This credit facility was sanctioned to the Company only to meet its working capital requirements and not for purchase of immoveable property.
4. The Respondent No.2 and 3 had filed written submissions dated 10.04.2024 stating that the captioned Petition and the reliefs sought therein are premised on the basis that the Petitioners have lost confidence on Respondent Nos.2 and 3 on account of differences and disputes within the family. The object of the Petitioners is not to protect the interests of Respondent No.1 Company. Their objects are clearly to force Respondent Nos.2 and 3 to agree to the Petitioners' unreasonable demands for separation in the family. The Petitioners have failed to explain, much less have made an averment that there is a justifiable case for the winding-up of Respondent No.1 Company.

- 4.1. Respondent Nos.2 and 3 are ready and willing to either purchase the shares of the Petitioners or sell their shares to the Petitioners so that Respondent No.1 Company comes under the exclusive control of either the Petitioners or Respondent Nos.1 and 2, as the case maybe. Refusal to buy-out/ sell-out by the Petitioners disentitles the Petitioners to any reliefs.
- 4.2. Without prejudice to the submissions set out hereinbelow, assuming whilst denying that there is any oppression and mismanagement case made out, the final relief, the Petitioners would be entitled to buy-out/ sell-out. Moreover, given that there is lack of trust between the two groups in Respondent No.1 Company and a stage has come where it has become impossible for the Petitioners and Respondent Nos.2 and 3 to work together, this Tribunal is empowered to put an end to the matters complained of and direct a complete buyout/ sellout as the only plausible solution. [See Daulat Makanmal Luthria V. Keshav S. Naik (1992) 3 CompLJ 119 (CLB) – Paras 11-13 (Sr No.3 of Compilation of Judgments), Also see Surendra Goyal V. Nile Aqua Faucets P. Ltd. (2008) 142 Comp Case 634 (CLB) – Para 19 (Sr No.4 of Compilation of Judgments)]
- 4.3. In order to maintain a petition under section 241 of the Act, the Petitioners ought to show that conduct of the majority shareholders towards the minority shareholders was harsh, burdensome and wrong and that such conduct was mala fide and was for a collateral purpose. The Petitioners have failed to show how they have been oppressed as shareholders. Directorial complaints do not pertain to the rights of a member

of a company. Thus, members cannot maintain an oppression and mismanagement petitions for directorial complaints [See Subash Hastimal Lodha V. Manikchand Promoters and Developers P. Ltd. (2007) 140 Com Cases 512 – Paras 11-13 (Sr No.5 of the Compilation of Judgments)].

4.4. The entire fulcrum of the Petitioners' case is based on alleged unauthorised third-party loans, reconstitution of committees, irregularities in conducting the Board Meetings etc., unauthorised personal expenses, etc., all in respect of action/ in actions by the Board of Directors of Respondent No.1 Company. None of them would amount to actions of oppressive act of majority shareholders towards the Petitioners, who are, in fact, not minority shareholders. The Petitioners cannot and ought not be permitted to plague the business and management of Respondent No.1 Company to further their own agendas, contrary to the desire of the majority shareholders of Respondent No.1 Company.

4.5. The Petitioners have orchestrated disputes in respect of Respondent No.1 Company as they have set up a competitive business and therefore, they are not concerned about the interests of Respondent No.1 Company.

4.6. It is submitted that Respondent No.1 Company cannot be made to suffer due to the Petitioners' ill-motives. Any reliefs, if granted, would be prejudicial to the interests of the company and its shareholders. The Hon'ble Madras High Court in G. Kasturi & Ors. V. N. Murali (1992) 74 Comp Cas 661 - paras 22 and 23 (Sr No.11 to the Compilation of Judgments) has

observed that interest of a shareholder to participate in the management of the company cannot be clubbed with the interest of the Company. The interest of the company is paramount and not of an individual/ member. Similarly, the Hon'ble Supreme Court in Hind Overseas (P) Ltd. (Paras 34-35) in M.S.D.C Radharamanan V. M.S.D.C Chandrasekara Raja & Anr. (2008) 6 SCC 750 - Paras 40-41 (Sr No.12 to the Compilation of Judgments) and in Sangramsingh P. Gaekwad and Ors. V. Shantadevi P. Gaekwad (2005) 11 SCC 314 - Para 202 (Sr No.9 to the Compilation of Judgments) held that what is important is not the interest of an applicant but the interest of the shareholders of the company as a whole.

4.7. Thus, it is submitted that while exercising powers under Section 241 and 242 of the Companies Act, 2013, the Hon'ble Tribunal is required to consider the interest of the company as a whole and not of individual shareholders/ groups. In the instant case, the reliefs sought by the Petitioners are for their own benefit at the cost of the interests of the Respondent No.1 Company and its shareholders.

4.8. From the pleadings, it is clear that there has been differences in the family and the present proceedings are initiated with a view to score a personal goal and use as a pressure to put Respondent Nos.2 and 3 to terms which are favourable to the Petitioners. In such a scenario, this Hon'ble Tribunal ought not entertain the captioned Petition alleging oppression and mismanagement petitions filed by one fraction of the family against the other [See C. P. Gnanasambandam V. Tamilnad Transports Pvt Ltd.

(1971) 41 Comp Cas 26 (Sr No.2 to the Compilation of Judgments)]

- 4.9. Since the Petition itself is not maintainable, the question of granting any interim relief, which ought to be in aid of final relief, cannot and ought not be granted.
5. Heard Learned Counsel and perused the materials available on record.
- 5.1. We note that the promoters group is divided into two groups each one controlled by the siblings, who have equal representation on the board of the Respondent Company. Apart from this, the Respondent Company is also stated to have independent directors on its Board. The primary allegation of the Applicant emanates from equal representation of factions in the promoters group on the board of the Company whereby the Respondent faction commands supremacy as the Chairman of the Company is from their faction and has a casting vote. Accordingly, it is the case of the Applicant that the business transacted in the board/committee meeting is as per the whims of the Respondent faction who commands majority by way of casting available to their faction.
- 5.2. We find that each of factions has made allegations of wrong doing against each other. Where as the Applicant faction complains of high handedness, grant of short term accommodation in the form of interest free loans, booking of personal expenses and not conforming to end use mandate of

the loan taken from the HDFC Bank, the Respondent faction alleges the booking of personal expenses and carrying on competing business through one of the accomplices causing detriment to the business interest of the Respondent Company and non-payment of dues owed by the group companies which in the control of Applicant faction.

5.3. We further find that both the parties had entered into mediation which is stated to have failed. The Respondent faction has offered to buy out / sale out proposition and has expressed willingness to make an offer with the option vested in the other faction or an offer may be made by the Applicant faction with an option to Respondent to choose.

5.4. After taking into consideration the allegations of each factions, we are of prima facie view that both the parties have been taking advantage of the positions, they were placed in, whenever the circumstances have allowed them to do so. The independent directors of the Board in the company have not been able to act as balancing factor on the board to keep alleged misuse of the power by any of the faction. We are of the prima facie view that these alleged acts are taking place in view of sibling's rivalry between both the factions. These alleged acts, brought forth by both the factions, though some of that are in nature of their directorial rights, lead us to prima facie conclusion that if the balance of power at the board level is not checked and both the factions are allowed to indulge into fighting, the consequences arising from the wrong doing will

certainly be detriment to the interest of Respondent Company, which may also be detriment to public share holders as well.

5.5. Accordingly, we consider it appropriate to appoint Mr. Pradip Kumar Das, Retired Banker, Mobile No. 7719886666, email pkdas1962@yahoo.com as non-executive Chairman of the Board of Directors, who shall exercise his vote in case there is a tie on any of the business transacted at the Board meeting. The said Chairman shall also be member of audit committee. The said Chairman shall be paid remuneration in terms of both sitting fees as is payable to the director of the Company for attending the board/committee meeting. It is clarified that such Chairman shall enjoy immunity from/against any action or legal proceedings instituted by any person including Government Authorities in relation to company affairs carried out during his incumbency. The appointment of said Chairman shall remain in force until further orders.

5.6. As already noted in the preceding paras, both the factions have equal representation of the board and the position has remained so in terms of inter-se understanding between family members, we are not inclined to retrain / annul the appointment of Respondent No.2 and 3 on the board of the Company if having been done in the board meeting dated December 13 2023.

5.7. Since, the alleged transactions are already forming part of the books of account, which have been audited by an independent statutory auditor, we do not find any force in the prayer for appointment of forensic auditor at this juncture.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 90 OF 2024
C.A. 92 OF 2024
In
C.P. No. 306/MB/2023

6. In view of the foregoing, the CA 90 of 2024 is party allowed and 92 of 2024 is dismissed and disposed of in terms of above orders.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)