

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 203
CP/5(AHM)2023

Order under Section 241-242 of the Companies Act, 2013

IN THE MATTER OF:

Hitesh Shah & Anr

.....Applicants

V/s

Aquafil Polymers Company Pvt Ltd & Ors

.....Respondents

Order delivered on: 15/03/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Rajeev

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP/05(AHM)2023

[An application under 242-242 of the Companies Act, 2013 for passing the interim orders]

In the matter of :

1. **Mr. Hitesh Shah**

Having its address at:
A-102, Ishan 3, Nr. Saavi,
Woman's Hospital,
Anandanagar Road,
Praladnagar Ahmedabad,
Gujarat-380051

2. **Mr. Poojan Hitesh Shah**

Having its address at:
Having its address at:
A-102, Ishan 3, Nr. Saavi,
Woman's Hospital,
Anandanagar Road,
Praladnagar Ahmedabad,
Gujarat-380051

....Petitioners

Versus

1. **Aquafil Polymers Company Pvt. Ltd.**

Having its address at:
202, 203 Shyamal Complex,
Nr. Kamdhenu Complex,
Opp: Polytecnic, Ahmedabad
Gujarat-380015.

2. **Mrs. Anita Roy**

Having address at:
GH 1, 14A Gurgaon One
Apartment, Sector 22,
Gurgaon, Haryana

3. **Mr. Akshay Gupta**
Having its address at:
H.No.-894/6, Mehurauli Gadapur,
Gadiapur South,
Delhi-110030
4. **Mr. Adarsh Pal Singh**
Having its address at:
C-9,/9175, VasantKunj,
New Delhi-110070
5. **Yogesh Gupta**
Having its address at:
H.No. 894/6, Mehurauli Gadapur
Gadaipur South Delhi-110030
6. **Luri Watersystems India Private Limited**
(U74999HR2018PTC074130)
Having its address at:
14A, GH-1, Gurgaon One Apartments,
Sector 22, Gurgaon HR-122015
7. **Registrar of Companies**
Ministry of Coirporate Affairs
Having its address at:
ROC Bhavan, Opp. Rupal Park,
Ankur Cross Road,
Naranpura, Ahmedabad.

....Respondents

Order reserved on : 01.03.2023
Order pronounced on : 15.03.2023

Coram: DR. MADAN B. GOSAVI, MEMBER (JUDICIAL)

KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)

Present:

For the Petitioner : Mr. Pavan S. Godiawala, Ld. Adv.

For the Respondents : Mr. Arjun Sheth, Ld. Adv.

INTERIM ORDER

[PER: DR. MADAN B. GOSAVI, MEMBER (J)]

1. This petition under Section 241-242 of the Companies Act, 2013 is filed by the petitioners seeking certain relief against the act of oppression and mismanagement of Respondent No. 1 Company (for short “R-1”) by Respondent Nos. 2 to 4 (for short R-2 to R-4”). Pending the petition for hearing the petitioners claimed certain interim relief.

2. We have issued notice to the respondents calling upon them to file the reply relating to the interim prayer only as there is urgency. Accordingly, Learned counsel Mr. Arjun Sheth appeared for R-2 and filed the reply to interim prayer.

3. We have heard learned counsel Mr. Pavan S. Godiawala for the petitioner and learned counsel Mr. Arjun Sheth for R-2. Other respondents did not appear.

4. Learned counsel for the petitioner submitted that the petitioners are the promoters of R-1 company dealing in specialization in engineering, procurement, design, supply, installation, construction of EPC, operations and maintenance of the project for the water waste treatment segment business. The company has been established in 1997. Its affairs were carried successfully. The R-1 company gets various orders from government and semi-government agencies/bodies and even by private contracts. Learned counsel further submitted that one Share Purchase Subscription Agreement has been executed on 25.09.2019 in between the petitioners and R-2. But the R-2 took undue advantage of some clauses of that agreement and started taking decisions against the petitioners’ interests in the company. Learned counsel relied on certain clauses of that agreement, and more particularly, the clause relating to disputed receivable “i.e., 6.22 to 6.6 wherein it is mentioned that as far as the past disputed receivables are concerned, petitioners are entitled and the petitioners are also to clear the past liabilities. He also submitted that the R-1 i.e., company and R-2 are not liable even for

the past liabilities but at the same time, R-2 shall not claim anything from the past disputed receivables. It is also agreed by and between the parties that R-1 shall credit the amount so received under the head of disputed receivables in the existing account of the R-1 company maintained with Yes Bank and Bank of India and those accounts shall be operated by the petitioners only.

5. Learned counsel for the petitioner further submitted that none of the parties to the proceeding disputed the agreement and during the last four years, none of the parties to the agreement has invoked the arbitration clause as there is no dispute about the terms of the agreement. He submitted that respondents now started taking oppressive by misusing the provisions of the Companies Act, 2013 against the interests of the petitioners. On 03.12.2022, certain resolutions have been passed in the meeting of the Board of Directors thereby powers of the petitioner to represent the company before Courts/Tribunals relating to the proceedings pending relating to the past recoveries are being passed. R-2 also proposed to appoint the Additional Director i.e., R-4 by circulating the resolution dated 03.01.2023 which is being passed illegally. The R-2 is passing number of resolutions on the basis of the so-called majority and trying to get entire control of the affairs of the company as the sole representative of the R-1 company in all legal proceedings which is against the clauses of Share Purchase Agreement referred above. He submitted that R-3 to R-5 are supporting the illegal acts of R-2. In spite of the service of notice of this petition, they did not file any reply.

6. Learned counsel for the petitioner also submitted that the Share Purchase Agreement is not only about past liabilities but also relating to business operations and he relied on some clauses of the agreement. According to him, petitioners are duly adhering to the terms of the agreement. They have substantially discharged the past liabilities as standing in the books of account ending on 31.03.2019. The R-2 has done due diligence before entering into the above agreement through PWC firm and now she is bound by the agreement. Learned counsel for the petitioner submitted that the petitioners' have the right to appear and represent the R-1 company in all legal proceedings before Courts/Tribunals/Arbitrators etc. He prayed that R-

2 may be restrained affecting the petitioners' right to appear and represent R-1 company before all legal forums.

7. As against this, learned counsel Mr. Arjun Sheth for R-2 submitted that the R-2 has infused her hard-earned money in R-1 company. The Share Purchase Agreement was entered for the sole purpose to pay the debt of secured lenders of R-1 company and it was only object of Share Purchase Agreement and none else. He submitted that the petitioner has concealed the number of litigations and contingent liabilities of R-1 company at the time of execution of the Share Purchase Agreement and in order to safeguard the interests of R-1 company, now, necessary decisions are being taken by R-2 in the best interest of the company.

8. Learned counsel Mr. Sheth further submitted that the petitioners' right to represent R-1 company in pending arbitration proceedings cannot be allowed because the petitioners have already produced various fictitious bills in the arbitration proceeding on behalf of R-1 company and for these misdeeds of the petitioners, the R-2 can be held liable. The government may initiate a criminal case against respondents also because of the above criminal acts done by the petitioners.

9. He further submitted that there were certain legal proceedings pending against R-1 company relating to dishonors of the cheques and those proceedings were not disclosed by the petitioners when the agreement was executed. He submitted that if the petitioners have any grievance about the agreement in question then they could invoke the arbitration clause under Share Purchase Agreement and for that this application under Section 241-242 of the Companies Act, 2013 is not maintainable at all. He submitted that since the main petition itself is not maintainable, the petitioner is not entitled to have any interim relief as prayed.

10. In rejoinder, learned counsel for the petitioner submitted that the statutory right under the Companies Act, 2013 cannot be curtailed by way of contractual rights envisaged in the Share Purchase Agreement. He also submitted that in fact the rights of the petitioners even under the Companies

Act, 2013 are directly violated during the hearing of this petition. When this petition was pending for hearing, on 22.02.2023 the R-2 called EOGM and proposed the resolution to remove petitioners, though, this Tribunal has specifically directed R-2 not to pass any resolution which is prejudicial to the rights and interests of the petitioners. He also submitted that now R-4 who is completely stranger to the company has been appointed as the Director and it is against the order passed by this Tribunal. According to him, the decision of appointing the R-4 as the Director is against the interests of R-1 and the petitioner, it has to be set aside. According to him, petitioners are entitled to recover past disputed receivables. He categorically denied that any fictitious bills are produced in the arbitration proceeding by the petitioners. According to him, the R-2 has been mismanaging the affairs of R-1. She is taking decisions prejudicial to the interests of R-1 company. The R-2 is using the power of the majority shareholders to take oppressive decisions against the interests of the petitioners and R-1 company. He prayed for interim relief as above.

11. We have gone through the record and proceedings. We took into consideration the submissions of both learned counsels as above. It is an admitted position that the Share Purchase Agreement which was executed in between the petitioners, R-2 and R-1 is not in dispute, till today as neither party to that agreement challenged any term or any clause in the agreement till this date. It is admitted that as per terms of the Share Purchase Agreement, the petitioners are at obligation to pay the past liabilities of creditors of R-1 company as per the audited books of 31.03.2019. The petitioners are entitled to receive the disputed receivables. Clause 6.3 of the Share Purchase Agreement gives the rights to the petitioners to receive and recover disputed receivables. Cause 6.5 of the Share Purchase Agreement states that any liability arising out of the disputes shall be borne by the petitioners. Clause 6.6 of the Share Purchase Agreement clearly mentions that new management i.e., R-2 cannot take any benefit of past receivables and so also the R-2 is not responsible for any litigation arising out of past transactions. It is settled law that criminal liability is the strict liability and the R-2 cannot be held responsible for any act allegedly if at all done by the

petitioners in the past. Clauses 6.2 to 6.6 very clearly state that the petitioners are solely responsible for past liabilities till 31.03.2019 and, at the same time, the petitioners are entitled to receive the disputed receivables. The R-2 is the new management, is not entitled to receive disputed receivables. It is also not in dispute that prior to the execution of the Share Purchase Agreement, the petitioners were representing R-1 company in all proceedings before Arbitrator/Conciliator/Tribunal/Courts. It is submitted on behalf of the R-2 that the petitioners' powers to represent cannot be considered because R-2 has been apprehending that due to the petitioners' presence before Arbitrator, she may land in trouble. However, we hold that the Share Purchase Agreement protects her rights. Since the petitioners are entitled to have disputed receivables, but at this stage, without going into that aspect as to what they are entitled to receive and what they are required to pay towards past liabilities, we allow the petitioners to appear and represent R-1 company in all pending proceedings because they are still directors.

12. Keeping contention open in respect of other allegations and counter-allegations, we direct the parties to complete the pleadings in the main proceeding within two weeks by exchanging *inter-se*. Accordingly, we pass the following orders:

ORDER

- I. Pending the main petition for hearing, the petitioners are allowed to appear and represent the R-1 company before all judicial/quasi-judicial/arbitral proceedings pending against the R-1 company.
- II. List the matter for further consideration on 06.06.2023.

13. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)**