

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**
(Through physical hearing/VC Mode (Hybrid))

C.A.No.51 of 2022 in
C.P.No.39/BB/2022
U/s.98 of the Companies Act, 2013
R/w. Rule 11 of the
National Company Law Tribunal Rules, 2016

In the matter of:

M/s. BlueMatch Impact Concepts BV
A Private Limited Company with limited liability under
The laws of the Netherlands,
R/o. at Lien Gisolfstraat 14, (2031 VS), Haarlem,
Netherlands. - Applicant

AND

1. M/s. BlueMatch Impact Solutions Private Limited
Khata No.205, Bellavi Village, Kasaba Hobli,
Malur Taluk,
Kolar – 563 130 - Respondent No.1

2. Sharmishta B.S
Director, BlueMatch Impact Solutions Pvt. Ltd.
R/at. No.5, 9th Cross, 4th Main,
Malleshwara,
Bengaluru – 560 003 - Respondent No.2

3. Shri Lokesha K.G
No.28, Divya Regency, Flat No.105,
1st Floor, 1st Main,
Tata Silk Farm,
Basavanagudi,
Bengaluru – 560 004 - Respondent No.3

Order delivered on: 16/02/2024

Coram: 1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri Vikram Unni Rajagopal
For the Respondent No.2 : Ms. Sneha Nagaraj

ORDER**Per: Manoj Kumar Dubey, Member (Technical)**

1. This Application has been filed by M/s. BlueMatch Impact Concepts BV (hereinafter referred to as 'Applicant'), on 24.05.2022 U/s.98 of the Companies Act, 2013 (hereinafter referred to as the 'Act') R/w. Rule 11 of the NCLT Rules, 2016 against M/s. BlueMatch Impact Solutions Private Limited & 2 Ors. (hereinafter referred to as the 'Respondents'), seeking to direct holding of Extraordinary General Meeting (herein after referred to as 'EGM') of the Respondent No.1 Company in terms of the proviso to Section 98 (1) of the Companies Act, 2013.
2. Brief facts of the case, as mentioned in the Application, *inter alia* stating as follows:
 - i. The Applicant being the 90% majority shareholder of Respondent No.1 Company, filed the Company Petition bearing C.P.No.39/BB/2022 seeking various reliefs in relation to oppression and mismanagement of affairs of Respondent No.1 Company by the Respondent No.2 (being the other shareholder holding 10% shares of Respondent No.1).
 - ii. The Respondent No.1 was incorporated on 19.04.2019 as a subsidiary of the Applicant. The 1st Respondent was set up as a social enterprise by the Applicant, with the vision of manufacturing affordable, smokeless and safe cooking stoves for use especially in rural communities in India.
 - iii. It is stated that this Tribunal vide Order 11.03.2023, issued notice on the Company Petition and observed that "*issuance of the notices in the C.P. shall not restrain the Petitioner from taking appropriate actions in terms of Companies Act, 2013, if they are so advised.*" In terms of the liberty granted by this Tribunal, Robertus Nicolaas Nieuwenhuizen, the Director of the Respondent No.1 and representative of Applicant the majority shareholder in the Company, issued a notice dated 07.04.2022 calling for a Board Meeting at a short notice to the other Director on the Board of Respondent No.1, namely Sharmista Bangalore Shankaranarayana,

Respondent No.2 herein. Accordingly, Respondent No.2 provided consent for the Board Meeting to be held on 09.04.2022. The Board Meeting of Respondent No.1 was held on 09.04.2022 and was attended by both the Directors. When the Agendas in the meeting were proposed to be voted upon, the Respondent No.2 voted against appointment of an additional Director on the Board of Respondent No.1, voted against substitution of the authorized signatory of the Bank Account of Respondent No.1 and only agreed to the other Director Robertus Nicolaas Nieuwenhuizen being a joint signatory to the Bank Account of Respondent No.1. The Respondent No.2 further voted against amending the Articles of Association of the Company which provides for the first Directors to be the lifetime Directors of the Respondent No.1. In respect of appointment of Interim Company Secretary to manage the affairs of the Respondent No.1, Respondent No.2 wanted to verify the credentials of the Company Secretary before giving her consent. The last three resolutions in respect of assignment of design rights to Applicant, holding of an Extra Ordinary General Meeting with 21 days' notice, verification of the authorization based on which Respondent No.2 instituted O.S.No.148 of 2021 before the Principal Civil Judge, Malur on behalf of the Company was accorded a negative vote by the Respondent No.2.

- iv. It is submitted that the Applicant thereafter circulated the video recording of the Board meeting held on 09.04.2022 and the minutes of the meeting by way of email dated 27.04.2022 recording the summary of what had transpired. The Respondent No.2 raised issue that the draft of the minutes ought to be circulated to her and not the final signed version. Further the Respondent No.2 raised objection to the video recording of the Board Meeting held and demanded that an unedited version be given to her.
- v. Aggrieved by the conduct of the Respondent No.2, the Applicant through its representative Director Robertus Nicolaas Nieuwenhuizen made a requisition on 27.04.2022 for calling EGM. Based on the said requisition, the Board of the Respondent No.1 issued a notice for holding of the EGM in terms of Section 100 of the Companies Act, 2013. However, Respondent No.2 did not respond

even after two weeks had elapsed since the issuance of the notice calling for the EGM. Again a reminder was sent by email dated 12.05.2022 asking the Respondent No.2 to respond to the notice of EGM and intimating her that the statutory notice period of 21 days would expire on 18.05.2022. Thereafter, Respondent No.2 responded to the reminder sent by the Applicant regarding the EGM on 13.05.2022 and sought to take a totally incorrect stand that there was no consent of the Board of Respondent No.1 to conduct the EGM and since she voted negative on all agendas in the Board Meeting held on 09.04.2022, the EGM cannot be conducted.

- vi. It is further stated that EGM, as per the notice, was held on 18.05.2022 with Robertus Nicolaas Nieuwenhuizen acting as Director and Chairman of the meeting and William Wilhelmus Hendrikus acting as the representative of the Applicant Company to vote upon the resolutions proposed to be passed. Due to Respondent No.2 not attending the said EGM and for want of quorum of two Members, the EGM failed. Hence this Application has been filed under the Proviso to Section 98(1) of the Companies Act, seeking directions from this Tribunal that one member of the Company present shall be deemed to constitute a meeting.

3. The Ld. Counsel for the R-2, has filed statement of objections vide Diary No.4088 dated 28.09.2022, by *inter alia* contending as follows:

- i. It is submitted that the Applicant who is a majority shareholder of the Respondent No.1 is trying to close the operations of the Respondent Company by transferring the intellectual property rights of the Respondent Company, specifically the design patent rights to itself through this EGM. Further, the Respondent No.2 has not been paid her arrears of salary and operational expenses, the Applicant is passing resolutions favourable to itself in detriment to Respondent No.2, causing several financial loss.
- ii. It is stated that all the four agenda items of the EGM dated 18.04.2022 held by the Applicant is detrimental to Respondent No.2. The Item No.1 agenda is to appoint an additional Director whose appointment is for constituting a quorum in order to displace and remove the Respondent No.2 from her position as a Director; Item

No.2 agenda is to appoint a Company Secretary of the Petitioner's despite the Respondent Company having a Company Secretary who has complied with all the legal compliances on behalf of the Company up to date; Item No.3 agenda is to assign the design patent rights of "Ecostove" belonging to the Respondent Company to the Applicant so that nothing remains with the Respondent Company and the Applicant can shut down the operations of the Respondent Company and not pay the outstanding salary dues of the Respondent No.2 and Item No.4 agenda to amend the Articles of Association to state that the Director appointed on the Board of the Respondent Company shall not be a permanent Director which is unfavourable to Respondent No.2.

- iii. It is submitted that, instead of making a requisition to the Board, the Applicant issued an EGM notice and agenda on the letterhead of the Respondent Company calling for an EGM vide email dated 27.04.2022. The said EGM notice and agenda issued by the Applicant on behalf of the Respondent Company neither had any approval nor backing from the Board of Respondent Company.
 - iv. It is submitted that if the said Application is allowed, the Applicant will pass resolutions appointing an additional Director for the purpose of fulfilling the quorum requirements under the Act and thereafter through another EGM and/or Board meeting the Applicant will remove the Respondent No.2 as a Director of the Respondent Company.
- 4.** The Ld. Counsel for the Applicant has filed written submissions along with copies of the judgements vide Diary No.6161 dated 08.12.2023, by *inter alia* stating as follows:
- i. It is submitted that the EGM was held on 18.05.2022. The Respondent No.2 did not attend the meeting. The EGM therefore failed due to lack of quorum. There is serious deadlock in the management of the Respondent No.1 Company. It is therefore 'impracticable' to call, hold and conduct an EGM of the 1st Respondent Company. It is submitted that as per the proviso to Section 98(1) of the Companies Act, this Tribunal is vested with the

power to issue a direction calling for a meeting where one Member of the Company present shall be deemed to constitute a meeting.

ii. Further the Applicant relied on the following Authorities in support of the present Application:

- a. *Pucci Dante Vs. Rafeeqe Ahmed, (1999) 95 Comp Cas 566 (CLB),*
- b. *Kadapala Reddy Sreyas V. Leap Mobiles Pvt. Ltd. & Ors., Order dated 31.03.2023*

5. The Ld. Counsel for the Respondent No.2 has filed written submissions along with copies of the judgements vide Diary No.282 dated 12.01.2024, *inter alia* contending as follows:

- i. It is stated that the Applicant has filed to comply with the requirements of Section 100(2), (3) and (4) of the Act while calling for the said EGM. The EGM failed owing to the Applicant's contravention to the aforesaid provisions. Thus Section 98 of the Act has been invoked in this instance to overcome the said illegality committed by the Applicant and not due to any "impracticable" conditions which requires the interference of this Tribunal.
- ii. It is submitted that the right to requisition an EGM is subject to the statutory prescribed procedural and numerical requirements. Thus, if the requisition under consideration is inherently illegal or invalid by virtue of non-compliance with the requirements of the law, it cannot be construed as a valid requisition within the meaning of Section 100 of the Act.

iii. Further the Respondent No.2 relied on the following judgements support of the present Application:

- a. *VIL Ltd. Vs. Raibareilly Allahabad Highway (P) Ltd., (2016) 197 Comp Cas 244 (CLB),*
- b. *Ruttonjee and Co. Ltd., passed by the Hon'ble High Court of Calcutta vide Order dated 25.07.1967,*

6. Heard Shri Vikram Unni Rajagopal, Ld. Counsel for the Applicant and Ms. Sneha Nagaraj, Ld. Counsel for the Respondent No.2. We have carefully perused the pleadings of the parties and extant provisions of the Companies Act, 2013 and the Rules made thereunder.

7. The Ld. Counsel for the Applicant submitted that the Applicant and the Respondent No.2 are two Directors in the Respondent No.1 Company.

The Respondent No.2 is intentionally avoiding the meetings convened by the Applicant. The Respondent No.1 Company's activities have come to a standstill because of the incapability of Respondent No.2 and refusal to allow the majority shareholder to exercise their rights to the detriment of Respondent No.1 with only ulterior motive of wanting to gain personally from the Responded No.1 Company.

8. It is relevant to extract Section 98 of the Companies Act for ready reference, which reads as under:

“Section 98: Power of Tribunal to call meetings of members, etc.

(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the Company may be called, or to hold conduct the meeting of the Company in the manner prescribed by this Act or the Articles of the Company, the Tribunal may, either suomotu or on the Application of any Director or Member of the Company who would be entitled to vote at the meeting;

a) order a meeting of the Company to be called, held and conducted in such manner as the Tribunal thinks fit; and

b) give such ancillary or consequential directions as the Tribunal thinks expedite, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the Company:

Provided *that such directions may include a direction that one member of the Company present in person or by proxy shall be deemed to constitute a meeting;*

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the Company duly called, held and conducted”.

The submissions of the Petitioner is that the EGM failed due to lack of quorum and to allow the Petitioner to conduct EGM with one member of the Company present, under the proviso to Section 98. The direction under Section 98 (1) of the Companies Act, 2013 is to be passed when it is reasonably, impracticable to call for a meeting of a Company (other than the Annual General Meeting). It was stated by the Petitioner that the Board meeting was held on 09.04.2022 at the initiation of Mr. Robertus Nicolaas Nieuwenhuizen (Mr.RNN), being the Director of the Respondent No.1 and representative of the Petitioner Company. Though the Respondent No.2 attended the Board meeting on

09.04.2022, however, on a majority of the agenda items she voted in the negative as mentioned in the facts of this case above. She also objected to the final minutes of the meeting sent for her signature, instead of sending the draft for her perusal prior to it. Accordingly, Mr.RNN again made a requisition for calling for an Extra-Ordinary General Meeting (EOGM) of the Board of the Respondent No.1 Company, against which the Respondent No.2 failed to respond and attend to such meeting. The Respondent No.2 in her objections filed on 29.09.2022 has explained that it was done since many of the agenda items were unfavorable to her, being minority a shareholder, the Petitioner have not made a valid requisition to the Board for conducting the EOGM, and the agenda items have not been approved by the Board, etc. It is stated that the procedural requirement under Section 100 (2), (3) & (4) of the Companies Act, 2013 does not provide for making the requisition, and therefore, it was not a valid requisition within the meaning of Section 100 of the Companies Act, 2013. Instead, the Petitioner straight away gave notice of the meeting which was already decided to be held on 18.05.2022, which cannot be treated as valid. It is further stated that despite not having convened a valid EOGM, the Petitioner had recorded the minutes of the purported EOGM and since there was no meeting held on 18.05.2022; the minutes were pre-recorded on 18.04.2022 itself. The Respondent No.2 further stated that there was an oppression of her rights, being a minority shareholder by these actions, and in the absence of legally valid requisition, she decided not to be present in the meeting. It is noticed that due to these reasons of non-attendance of the Respondent No.2 for the EOGM called for on 18.05.2022 the Petitioner approached this Tribunal seeking reliefs under Proviso to Section 98 (1) of the Companies Act, 2013.

- 9.** Thus it is seen that the contention of the Respondent is that the said requisition made is not a “valid” requisition as per law, as such the requisition made should set out the matters for consideration and be signed by the requisitionists and sent to the registered office of the

Company. For the sake of convenience the provision of Section 100(3) is reproduced below:

“(3) The requisition made under sub-section(2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.”

It is observed from the records that, the said requisition made was made in the Letter head of the Respondent No.1 Company, with the signature of the Director of the Respondent No.1. On the other hand, it should have been signed by the requisitionist shareholder of the Respondent No.1 Company, and sent to the registered address of the Respondent No.1. Hence the Petitioner has not adhered to the mandatory requirements of Section 100(3), which clearly states that the requisition made should stipulate the agenda of the requisition and be ‘signed’ by the requisitionists.

- 10.** However, the Tribunal rejects the argument of the Respondent No.2 that, agenda items of the Requisition has to be pre-approved by the Board. It is observed in the order of Hon’ble High Court of Bombay in *“Invesco Developing Markets Fund v. Zee Entertainment Enterprises Limited”* 2022 SCC Online, wherein it was held that:

“ 42. On a literal and plain reading of Sections 98 and 100, we do not see any discretion/power vested with the Board of a Company to sit in judgment over "any matter" for consideration of which the meeting is requisitioned. On a plain reading, the Board of a Company is mandatorily obliged to requisition a meeting if the requirements specified in sub-sections (2) and (3) of Section 100 are satisfied. Needless to state, whether or not the proposed requisition should be given effect to, is be decided by the shareholders at the general meeting”

- 11.** Therefore, in the facts and circumstances of the case, the present petition is disposed of in terms of Section 98(1) (b) of the Companies Act,

2013, with a direction as follows: The Petitioner will send a proper requisition under Section 100 (2) & (3) of the Companies Act, 2013 which should be signed by the requisitionist shareholder of the Respondent No.1 Company, and send to the registered address of the Company, as required under Section 100 (2) and (3) of the Companies Act, 2013, within 10 days of this order. Thereafter, considering this requisition, the Board would meet within 21 to 45 days and consider the agenda appropriately. The Respondent No.2 is directed to remain present in this meeting of the Board.

- 12.** In case of failure in conducting a proper meeting after fulfilling the requirement of issuing a valid requisition and following the procedure in terms of Section 100 (2), (3) and (4) of the Companies Act, 2013, the Petitioner is at liberty to approach this Tribunal for the relief under proviso of Section 98 (1) of the Companies Act if they so desire. Therefore, this application is disposed of on the above terms.

**-Sd-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

**-Sd-
K. BISWAL
MEMBER (JUDICIAL)**