

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH - BENGALURU
(Through web-based video conferencing platform)

C.A No.123/2023 &
C.P No.132/BB/2022
Under Rule 11, 32 and 55 of the
National Company Law Tribunal 2016

Between:

**FEDERATION OF KARNATAKA CHAMBERS
OF COMMERCE AND INDUSTRY (FKCCI)**

Federation House, K.G Road,
P.B No.9996, Bengaluru – 560009
Represented by its Secretary

... **Applicant**

And

1. Shri S.V CHOWDASETTY

Proprietor of M/s. Ramakrishna
Agro Agencies,
No.201/1, K43/1, Kshetraiah Road,
Devamao Agrahara, K.R Mohalla,
Mysuru – 570024

... **Respondent No.1**

2. Shri.A BALAJI RAO

Proprietor of M/s. Lakshmiramana Petro
Services and President of Bengaluru
Petroleum Dealers Association,
No.135/2, Tanisandra Main Road,
Opp. Elements Mall, Bengaluru – 570045

... **Respondent No. 2**

In the matter of:

Shri S.V.Chowdasetty
And Another

... **Petitioners**

And

M/S. Federation of Karnataka
Chambers Of Commerce and Industry
And Others

... **Respondents**

Order delivered on: 02nd May, 2024

CORAM: 1. Hon'ble Justice (Retd.) T Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

C.A No.123/2023
C. P No.132/BB/2022

For the Applicant : Shri S.S.Naganand Senior Counsel
For Respondent : Shri Manikanta

ORDER

Per: BENCH

1. This is an application filed by **M/s. Federation of Karnataka Chambers of Commerce and Industry** (hereinafter referred as **Applicant**) Under Rules 11, 32 and 55 of the National Company Law Tribunal, 2016 seeking to dismiss the Company Petition bearing C.P No.132/BB/2022 preferred by the Petitioner/Respondent pending before this Hon'ble Tribunal as not maintainable under law with exemplary costs.
2. The Respondents (Petitioners in main C.P) have preferred the Company Petition bearing C.P No.132/BB/2022 seeking various reliefs i.e.:
 - i. *To declare that the Respondent No.4 is ineligible for membership of Respondent No.1 Federation;*
 - ii. *To terminate the directorship of Respondent No.4 under Section 152 of the Companies Act, 2013;*
 - iii. *To disqualify Respondent No.4 as Director under Section 167 of the Companies Act, 2013;*
 - iv. *to instruct the Respondent No.2 & 3- Authorities to initiate penal/punitive proceedings against the Respondent No.4 under Section 159 of the Companies Act;*
 - v. *to investigate the affairs of the Respondent No.1 under Section 98 of the Companies Act, 2013*
 - vi. *to pass appropriate orders under Section 216 of the Companies Act etc.*
3. Brief facts of the case as stated in the application, are as follows:
 - a) The Respondents have invoked the jurisdiction of this Hon'ble Tribunal under Section 152, 159, 166, 167, 170, 171, 210 of the Companies Act, 2013 read with Rules 13, 14 and 17 of the Companies (Appointment of Directors) Rules, 2014 and Rule 11 of the National Company Law Tribunal Rules, 2016. This Hon'ble Tribunal has no jurisdiction to entertain any petition much less to grant any relief (s) under the

aforementioned provisions of law invoked by the Respondents. The aforementioned provisions do not in any manner grant power to this Hon'ble Tribunal to adjudicate a dispute between the parties. Hence the petition is liable to be dismissed in limine.

- b) This Hon'ble Tribunal under the Companies Act, 2013 has limited jurisdiction to entertain and adjudicate disputes only in relation to rectification or refusal of registration of members of a company, instances of oppression and mismanagement, conversion of company, etc. It is further stated that the dispute raised by the Respondents in the main C.P is with respect to the validity of the Articles of Association of the Respondent No.1 Company. It is settled law that the Articles of Association of a Company is in the nature of a contract entered into between the company and its members and between the members themselves. Any challenge to the validity of such contract ought to take up before a civil court and not before this Hon'ble Tribunal which is not the appropriate forum to adjudicate disputes of a contractual nature.
- c) It is further stated that an action for appointment/removal of a Director from a Company is within the powers of its members and the same is conducted by way of a democratic process. And such corporate democracy ought to be respected and not be interfered with. Any dispute with respect to election of directors of a Company or removal of directors ought to be adjudicated before the appropriate civil court. The Respondents being mischievous interlopers who do not have any majority support within the Respondent No.1 Company are attempting to abuse the process of law and wasting the time of this Hon'ble Tribunal. For the reasons stated above, it is clear that this Hon'ble Court does not have jurisdiction to entertain the present petition and hence the same deserves to be dismissed in limine with costs.

4. The Respondents have filed the statement of objections/reply vide Dy. No.1355 dated 29.02.2024 interalia contending as follows:

- a) It is stated that the said application is devoid of merit on both facts and in law. No prima facie or other case for grant of reliefs is made out as

against the answering Petitioners. Hence the said application is not maintainable and is liable to be dismissed in limine.

- b) It is stated that this Hon'ble Tribunal is conferred with vast and substantial powers and functions by and under the provisions of the Companies Act, 2013 and Rules framed thereunder. Further, this Hon'ble Tribunal not only has powers under inter alia Section 408 & 424 of the Companies Act, 2013 but also is bestowed with inherent powers under Rule 11 of the NCLT Rules, 2016.
- c) The averments in Para 3 of the application is a superfluous repetition of the baseless, self-serving submissions and the same has been countered supra and deserves no further elaboration. Further the issue in dispute and grievance of the Respondent is not with regard to the Articles of Association of the Company; neither is the validity of the said articles in question or under challenge in the instant petition. The grievance of the Respondent is with regard to the nomination and appointment of ineligible, unqualified directors by the Applicant and in manner that is ultra vires the Articles of Association thereof.

5. On 22.02.2024, both the parties were directed to file written submissions in respect of the application.

6. The Learned Counsel for the Applicant has filed the written submissions vide Dy. No. 1343 dated 29.02.2024 inter-alia stating as under:

- a) The main company petition is filed by the two members of the Company which is a not-for-profit company originally incorporated under the Mysore Companies Act, 1938 and subsequently registered pursuant to resolution under Section 21 of the Companies Act, 1956. It is federation of individuals and trading and manufacturing companies. The object of the Company is to promote trade, commerce service and manufacture. The Company has various category of members and as on date, the total number of its members is 3814.
- b) The Petitioners are two disgruntled members who are interest in disrupting the functioning of the Company. They have filed the petition invoking the following sections of the Companies Act, 2013 namely 152, 159, 166, 167, 170, 171, 210 and 216. They have also invoked several provisions of the Companies (Appointment of Directors) Rules, 2014.

The Petitioners have not invoked Section 241 of the Companies Act, 2013 as indeed they could not do so for want of numerical strength to maintain such a petition.

- c) The nature of the dispute raised relates to the appointment of Director and the alleged violation of the Articles of Association. Not being the petition under **Section 241** of the Companies Act, 2013, this Hon'ble Tribunal has no jurisdiction to adjudicate the disputes that have been raised in the petition. None of the Sections invoked in the petition, vest an adjudicatory power in the Tribunal.
- d) The power of a Civil Court is plenary and it is settled law that individual disputes between any member and the Company is amenable to adjudication in a civil suit. The same has been held at Para 16 to 18 in the case of *Prakash Roadlines Limited vs. Vijaykumar Narang ILR 1994 KAR 408*. The Respondent No.4 was elected as a Director by a democratic process. It is settled law that such democratic processes are not interfered with in civil proceedings as has been held at Para 19 in the case of *Karnataka Bank Limited vs. A.B Datar and others (1993) 2 Kant LJ230*.
- e) The prayer relating to Section 98 of the Companies, Act 2013 is misconceived since the Company's general body meetings have been held regularly and the Managing Committee has been duly constituted from time to time. The invocation of Section 216 is also misconceived as that power is vested with the Central Government and not on this Hon'ble Tribunal. The disqualification of a Director under Section 167 is also a matter which is not within the purview of this Hon'ble Tribunal. Therefore, the petition is not maintainable.
- f) Further, a perusal of the objections filed by the Respondents to the present application reveals that no objection has been pleaded to show that this Hon'ble Tribunal has jurisdiction except for contending that "this Hon'ble tribunal is conferred with vast and substantial powers and functions by and under the provisions of the Companies Act, 2013". Though Section 408 is not invoked in the company petition, the same is referred in the objection and the said section relates to the constitution of this Hon'ble tribunal. Similarly, Section 424 which is referred to in the

objections stipulates that procedure to be followed by this Hon'ble Tribunal and the Appellate Tribunal.

- g) The inherent powers under Rule 11 of the NCLT Rules 2016 has been invoked. It is well settled that inherent power is only exercisable when there is a plenary power. The inherent power does not confer any jurisdiction to entertain a substantial application; and the inherent powers cannot be invoked to act contrary to the substantive powers which is lacking in this case.

7. The Learned Counsel for the Respondent has filed the written submissions vide Dy. No. 1356 dated 29.02.2024 inter-alia stating as under:

- a) The grievance of the Respondent (Petitioner in main C.P) is with respect to the appointment of Respondent No.4 in the main petition as a Director despite being ineligible under the Memorandum and Articles of Association of the Applicant. Additionally the Applicants in Para 4 and 5 of their application contend that the dispute pertains to the validity of the Articles of Association and the appointment and removal of a director ought to be adjudicated before the appropriate civil court which is patently false for the reason that the challenge in the main petition pertains to the appointment of Respondent No.4 as a Director of the Company which is ultra vires its own Articles of Association.
- b) The conjoint reading of the objects of Section 6, 10 and 430 of the Companies Act, 2013 clearly shows that the Hon'ble Tribunal is duly empowered to determine any matter arising out of the provisions of this Act, including question pertaining to the Articles of Associations. Section 408 and 424 read with Rule 11 of the National Company Law Tribunal Rules, 2016 confers wide powers on this Hon'ble Tribunal. Further from Rule 11 it is clear that the Respondents have in fact affirmed the jurisdiction of this Hon'ble Tribunal and based on the provisions as mentioned above, this Tribunal has the jurisdiction to adjudicate the said matter both under the Companies Act, 2013 as well as the National Company Law Tribunal Rules, 2016.
- c) The Applicants have relied on two citations that have no bearing on the present dispute. It is pertinent to note that the Applicant/Respondent No.1 Company is a public company, which has more than 2000 members. Hence it is also in public interest that this Hon'ble Tribunal

not only adjudicates the petition, but also investigates that the affairs of the said company. The grievance of the Petitioners in the present petition that the Applicant has appointed Respondent No.4 as a Member of the Board of Directors in contravention of the Companies Act, 2013; and any appointment of a director being ultravires of the articles of Association of the Company in question can be challenged before this Hon'ble Tribunal.

8. We have heard the Learned Counsel for the Applicant and Respondent and carefully perused the records.
9. The main petition was filed by the Petitioners (Respondents herein) to declare the Respondent No.4 in main C.P as ineligible for the membership of the Company, to terminate the directorship and to initiate penal proceedings against the Respondent No.4 etc., alleging that the Respondent No.4 was not eligible to be either a Member or a Director of FKCCI, the said federation under the provisions of Chapter XI of Companies Act, 2013.
10. The Applicant has filed the present application for dismissal of the main company petition stating that this Hon'ble Tribunal has no jurisdiction to adjudicate the disputes that have been raised in the main petition and the Sections under which the main C.P is filed do not confer any jurisdiction on this Tribunal to decide the matter raised. The affairs of the Company are in accordance with its Articles of Association which lay down the provisions relating to constitution of the Managing Committee, its powers and functions, sub-committees, advisory committee.
11. On the otherhand, the Respondent contend that the Hon'ble Tribunal is vested with wide and comprehensive powers under the Companies Act, 2013 and rules framed thereunder, including inherent powers. The Petitioners in the main petition are calling in question the illegal appointment of Respondent No.4 as a Member of the Board of Directors of the Company- FKCCI and seeking his disqualification by invoking the powers of this Hon'ble Tribunal for declaring the said appointment as null and void. However, the Respondent has not produced any judicial precedents with regard to the case.

- 12.** The Applicant has correctly highlighted that the Petitioners in the main C.P have not invoked Section 241-242 of the Companies Act, 2013 for disputes related for appointment of Director and conducting of meeting or violation of Articles of Association etc., as they were not having numerical strength to file such petition. It is rightly stated by the Applicant that the Sections invoked in the main petition by the Petitioners do not vest any powers to this Tribunal to decide the matter. It is further contended that the inherent powers under NCLT Rules can be exercised only where there is a plenary power.
- 13.** The Petitioners have filed the C.P seeking various reliefs under Sections 152, 159, 166, 167, 170, 171, 210 and 216 of the Companies Act read with Rules 13, 14 & 17 of the Companies (Appointment of Directors) Rules 2014 and Rule 11 of the NCLT Rules, 2016.
- 14.** It is observed that Section 152 of the Companies Act relates to “*Appointment of Directors*”. However, the Petitioners in the prayer sought for termination of directorship of Respondent No.4 under Section 152 of the Companies Act, 2013. A bare reading of Section 152 of the Companies Act makes it clear that the prayer is misconceived since Section 152 refers to the Appointment of Directors. In addition the removal of the directors from the Company is within the powers of the Members and the Company; and any dispute/allegations raised regarding removal or appointment of the Director of the Company should be adjudicated before the civil court.
- 15.** Section 159 of the Companies Act relates to “*Punishment for contravention*”. The Petitioners have prayed under Section 159 of the Companies Act to instruct the Respondents No.2 & 3 to initiate penal/punitive proceedings against the Respondent No.4., which does not come within the jurisdiction of this Tribunal in accordance with this Section. Further Section 166 of the Companies Act, 2013 refers to “*Duties of Directors*” and Section 167 of the Companies Act, relates to “*Vacation of office of director*”. There is no role given to this Tribunal to pass any order under these Sections and therefore the plea is irrelevant and misplaced.
- 16.** Also, Sections 170 and 171 of the Companies Act, 2013 refer to “*Register of directors and key managerial personnel and their shareholding*” and “*Members right to inspect*”. Again, invoking these sections is misconceived since there is no role prescribed for this Tribunal in these said sections. It

is also noticed from the petition that the Petitioners have called for verification of Trust Deed under Section 170 and 171 of the Companies Act, which is beyond the scope of the jurisdiction of this Tribunal

- 17.** Moreover, Section 210 of the Companies Act, 2013 refers to “*Investigation into affairs of the company*” and Section 216 of the Companies Act 2013 refers to “*Investigation of ownership of the Company*”. A bare reading of the said sections shows that the powers is vested with the Central Government and not this Tribunal. Further, there is also no application filed before this Tribunal by the Petitioners for investigating the affairs of the company under Section 213 of the Companies Act 2013 along with relevant documents which establishes the fulfilment of conditions given under this Section. It is seen that the Petitioners have also sought to investigate the conduct of the affairs of the Company under Section 98 of the Companies Act. However, Section 98 of the Companies Act, 2013 is to call for the meeting of the Company other than Annual General Meeting, therefore the prayer is again misconceived.
- 18.** Therefore, considering the submissions of both the sides and decisions relied upon by the Learned Senior Counsel for the Applicant we hereby **allow** the present application bearing **C.A No.123/2023** filed by the Applicant and therefore, the main Company petition bearing **C.P No. 132/BB/2022 is dismissed** as not maintainable.

Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

Sd/-

**T.KRISHNAVALI
MEMBER (JUDICIAL)**