

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
04-07-2024 AT 10:30 AM**

**CP No. 225/241/HYD/2019
AND
Company Application 24/2023, IA No. 638, 797, 798, 799 & 1087/2019 in
CP No. 225/241/HYD/2019
u/s. 241 of Companies Act, 2013**

IN THE MATTER OF:

S. Radha Krishna & another

...Petitioner

AND

Hyderabad Pollution Controls Ltd & 13 others

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

CP No. 225/241/HYD/2019

Orders pronounced. In the result, **this Company Petition is rejected as not maintainable.** No costs.

IA No. 797/2019

While disposing the Company Petition, we have observed that Company Petition is not maintainable as the petitioners have an efficacious and alternative remedy in the provisions of the Companies Act, 2013. Therefore, in view of the order passed in Company petition no.40/2011, 8th Respondent is not made party to the Company Petition. **Hence IA is allowed and disposed of.**

IA No. 798/2019

While disposing the Company Petition, we have observed that Company Petition is not maintainable as the petitioners have an efficacious and alternative remedy in the provisions of the Companies Act, 2013. Therefore, in view of the order passed in Company petition no.40/2011, 7th Respondent is not made party to the Company Petition. **Hence IA is allowed and disposed of.**

IA No. 799/2019

While disposing the Company Petition, we have observed that Company Petition is not maintainable as the petitioners have an efficacious and alternative remedy in the provisions of the Companies Act, 2013. Therefore, in view of the order passed in Company petition no.40/2011, 6th Respondent is not made party to the Company Petition. **Hence IA is allowed and disposed of.**

IA No.638/2019

In the light of the orders passed in the Company petition. No orders are required in this Application. **Hence disposed of accordingly.**

IA No.1087/2019

In the light of the orders passed in the Company petition. This application is not maintainable. **Hence disposed of accordingly.**

Company Application No.24/2023

In the light of the orders passed in the Company petition. This application is not maintainable. **Hence disposed of accordingly.**

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – I

CP No.225/ 241/ HDB/2019

IN THE MATTER OF

HYDERABAD POLLUTION CONTROLS LTD.

BETWEEN:

1. Mr. S. Radhakrishnan

S/o. late G. Sankaran Nair, Aged 63 years

R/o. 83/B, Vengalrao Nagar Hyderabad-500038, Telangana

2. Mrs. V. Thara

W/o. Mr. S. Radhakrishnan, Aged 54 years

R/o. 83/B, Vengalrao Nagar Hyderabad-500038, Telangana.

...PETITIONERS

And

1. HYDERABAD POLLUTION CONTROLS LTD.

Regd. Off: 90/G, Phase I,

1.D.A. Jeedimetla

Hyderabad-500055, Telangana

2. **Mr. S. Gopalakrishnan Nair**

S/o. late G. Sankaran Nair Aged 73 years R/o. Flat No.204 & 205, Morning Glory, Nagarjuna Homes Nagarjuna Dreamland, Dulapally Cross Road Kompally, Secunderabad-500014, Telangana

3. **Mr. G. Ravi Sankar**

S/o. Mr. S. Gopalakrishnan Nair Aged 39 years

R/o. Flat No.204 & 205, Morning Glory, Nagarjuna Homes Nagarjuna Dreamland, Dulapally Cross Road Kompally, Secunderabad-500014, Telangana

4. **Mr. G. Parameswaran**

S/o. Mr. S. Gopalakrishnan Nair Aged 37 years

R/o. Flat No.204 & 205, Morning Glory, Nagarjuna Homes Nagarjuna Dreamland, Dulapally Cross Road Kompally, Secunderabad - 500014, Telangana

5. **Mrs. Geetha G. Nair**

W/o. Mr. S. Gopalakrishnan Nair Aged about 63 years

R/o. Flat No.204 & 205, Morning Glory, Nagarjuna Homes Nagarjuna Dreamland, Dulapally Cross Road Kompally, Secunderabad-500014, Telangana

6. **M/s. P. Murali & Co.,**

Chartered Accountants 6-3-655/2/3, Somajiguda Hyderabad-500 082.

7. **Mr. P Murali Mohana Rao Partner**

M/s. P Murali & Co., Chartered Accountants 6-3-655/2/3, Somajiguda Hyderabad-500 082.

8. **Mr. MV Joshi Partner**
M/s. P Murali & Co., Chartered Accountants 6-3-655/2/3,
Somajiguda Hyderabad-500 082.
9. **M/s. Ratnam Dhaveji & Co.**
Chartered Accountants 501, Aakash Ganga, 6-3-635 &
637, Khairatabad Hyderabad-500 004
10. **Mr. C V Ratnam Dhaveji**
Partner
M/s. Ratnam Dhaveji & Co. Chartered Accountants 501,
Aakash Ganga, 6-3-635 & 637, Khairatabad Hyderabad-
500.004
11. **Mr. Ajay Suman Shrivastava**
Practising Company Secretary 303, Durga Appartments 6-
3-902/D, Lane Adjacent to Ishwariya Silks Surya Nagar,
Somajiguda Hyderabad-500 082.
12. **Ms. P. Gayathri**
Practising Company Secretary H. No.3-10-26/25 R.T.C
Colony, Ramanthapur Hyderabad-500 013
13. **Mrs. Lalitha Vasudevan**
No.309, Morning Glory, Nagarjuna Homes Nagarjuna
Dreamland, Dulapally Cross Road Kompally,
Secunderabad - 500014, Telangana
14. **M/s. Mabj Industries**
90/G, Phase-I, I.D.A. Jeedimetla Hyderabad-500 055

... RESPONDENTS

DATE OF ORDER: 04.07.2024

CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH
NANDULA,
HON'BLE MEMBER (JUDICIAL)
SHRI. CHARAN SINGH, HON'BLE MEMBER
(TECHNICAL)**

Appearance: -

For the Petitioner : Dr.S.V.Rama Krishna, Counsel.

For the Respondent No.1 : Mr.K.Rajendran, Counsel along
with Mr.Rahul Asoorya, Counsel

For the Respondent No.6,7,8 : Mr.Chidambaram, PCS

PER: BENCH

1. This is an application filed under Section 241 of the
Companies Act, 2013 by Mr.S.Radhakrishanan and
Mrs.V.Thara for the following reliefs:

- (i) To declare the unapproved, unauthorized tampered and manipulated Balance Sheets, profit and loss accounts and audit reports certified and signed by Statutory Auditor, M/s. P Murali & Co for the years 2010-2011 on 01-09- 2011 & for the year 2011-2012 on 31-03-2012 in violation of the CLB order dated 18-05-2011 and filed by the Respondent No. 2 on sworn affidavit dated 10.9.2012 in the A.P High Court as illegal, null and void ab initio.
- (ii) To declare the fake and fabricated back dated resignation letter dated 01-10- 2011 of existing Statutory Auditors M/s. P. Murali & Co., Chartered Accountants as illegal, null and void ab initio as

the proof of dispatch shown was under certificate of posting on 01-10-2011, when the practice of Under Certificate of Posting (UCP) was discontinued by the postal authorities long back on 31-01-2011;

- (iii) To declare the unapproved, unauthorized, tampered and manipulated ITR-6 filed with the Income Tax department from 2010-11 to till date along with tax audit report in 3CA and 3CD forms from 2010-11 to till date falsely certified by M/s. P Murli & Co., and M/s. Ratnam Dhaveji & Co., as illegal, null and void ab initio as there was no approval for the same from the Board of Directors and the members in any AGM validly convened and conducted.;
- (iv) To declare the unapproved, unauthorized, tampered and manipulated Directors Reports, balance sheets and profit and loss accounts, Annual Returns and auditor's report, which are fabricated and falsely certified by the alleged new Auditor M/s, Ratnam Dhaveji & Co. and uploaded in the ROC/MCA webportal in December, 2013 for the Financial Years 2010-11, 2011-12 and 2012-13 in violation of the CLB order dated 18-05-2011 which are visible from the ROC Web-portal and all other Annual Returns for subsequent years as available in the ROC/MCA website as null and void and all the decisions taken at purported Board meetings, alleged AGMs and Adjourned AGMs as illegal, null and void ab initio;
- (v) To declare the alleged appointment letter dated 28-09-2012 issued by the 1st Respondent Company to M/s. CV Ratnam Dhaveji & Co., Chartered Accountants as Statutory Auditors of the Respondent No. 1 Company for 3 years at a time i.e. 2010-11, 2011-12 and 2012-13 at the AGMs and Adjourned AGMs claimed to have been conducted on 27.9.2012. and 25-10- 2012 respectively and all the subsequent appointment/re-appointment if any and the Fake Form 23B filed on 31-10-2013 and AOT-1 filed thereafter in respect of Auditor appointment in ROC/MCA web-portal as illegal, null and void ab initio; as the appointment is in violation of the CLB order dated 27- 09-2012.
- (vi) To declare the alleged Form 32 filed for illegally removing the 1st Petitioner as Whole Time Director of the Respondent No. 1 Company as illegal, null and void ab initio and restore him as Whole Time Director without any break from the original appointment date of 02-05-1996 with back wages /remuneration as he was enjoying at the time of his illegal removal as Director

with interest due and should be paid till such date the remuneration is paid.

- (vii) To declare fabricated and falsely certified Form 66 filed along with 3 years Compliance Certificates all dated 12.12.2013 for the Financial Years 2010-11, 2011-12 and 2012-13 including Forms 66 and Secretarial Compliance Certificates for the years 2010-11, 2011-12 and 2012-13 issued by Respondent No. 12 and further such secretarial compliance certificates, if any, issued by any company secretary subsequent as illegal, null and void ab initio;
- (viii) To declare all the fabricated notices for alleged Board meetings, AGMs/adjourned AGMs including the fabricated documents like Board meeting and AGM/Adjourned AGM attendance extracts, Board meeting and AGM/adjourned AGM minutes and all the Board meetings and AGMs/adjourned AGMs which are claimed to have been conducted without proper quorums for the alleged Board meetings as per the Article 40 of the Articles of Association and in violation of the provisions of the Companies Act, 1956/2013 for the alleged AGMs/adjourned AGMs as illegal, invalid. null and void ab initio;
- (ix) To declare that no Director who were on rotation is validly existing on the Board of Directors of the 1st Respondent Company from 2011 onwards as no AGMs were held for the past several years and consequently appoint fresh Board of Directors equally representing both the Petitioners and Respondents and appoint one independent Chairman by the Hon'ble NCLT.
- (x) To restrain the Respondents No. 1,2,3, & 4 from carrying any other business or activity within the premises and precincts thereof where the factory and office premises of the 1st Respondent Company is located either directly or through lease arrangement or job work basis whatsoever in nature and all the lease agreement entered into with third parties i.e. Respondent Nos. 5 and 14 and any other lease agreement made with any others are to be declared as illegal, null and void ab initio and the Respondents No.1 to 4 should be ordered to evict the illegal lease holders from the premises 90/G, Phase I, IDA Jeedimetla, Hyderabad-500055, State of Telangana, with immediate effect, since such illegal agreements does not have the approval of Board of Directors or adopted by the members in any AGMs/EGMs to lease out the premises of the Respondent No.1 Company.
- (xi) To declare the illegal transfer of 20 equity shares @ Rs. 10/- per share of the 1 Respondent Company by Mr. G Ravi Shankar

(Respondent No.3) to Mrs. Lalitha Vasudevan (Respondent No.13) for a consideration of Rs. 200/- on 25-06-2014 with the aim to increase the number of members from 8 to 9 so that the Respondents No.2,3 and 4 would have upper hand in voting and quorum purposes over the Petitioners and in violation and utter contempt of the CLB order dated 18-05-2011 as illegal, null and void ab initio and also restrain her from participating in any AGMs and declare the fake AGMS minutes shown to have been attended by the said Mrs. Lalitha Vasudevan in AGMs shown for 2013-2014, 2014-15, 2015-16, 2016-17 and 2017-18 as null and void ab initio.

- (xii) Any other order or orders as the Hon'ble Tribunal may deem fit and proper in the interest of justice.

2. The petitioners in para 4 of the petition under the caption

“Justification and eligibility for filing the present comprehensive Company Petition Under Section 241 of the Companies Act, 2013”, pleaded as below:

“The Hon'ble NCLT, Hyderabad Bench in C.P. No.40/2011 (TP No.50/HDB/2016) vide its elaborate reasoned Orders dated 26.10.2017 (copy filed herewith as Annexure - P1) allowed the said petition and inter alia ordered in para 28 as under:

Quote:

"28. In the result, the Company petition bearing CP No.40 of 2011 (TP No.50/HDB/2016) is disposed of with the following directions:

- 1) Hereby directed the respondents to restore the shareholding of the petitioners group and the second respondent Group in the ratio of 50:50 total shareholding of R-1 Company, in consonance with the Board's resolution dated 27th February 2007 and Agreement for Transfer of shares dated 8th April, 2010;

2) Hereby declared that all actions/decisions taken contrary to the interim orders dated 18.05.2011 and 27.09.2012 passed by the CLB are non-est in the eve of law, and these interim orders shall be in force till the next EGM, which is to be conducted by virtue of this order;

3) Hereby directed Respondents No.1 & 2 to convene an EGM within a period of two months from the date of receipt of copy of this order, by duly following all the provisions of the Companies Act, 2013 as well as the Articles of Association of R-1 Company and Principles of Natural Justice, in order to sort out their disputes and to conduct normal business of the R-1 Company. The parties are at liberty to raise their respective disputes before EGM to be conducted and resolve their issues therein;

4) The parties are at liberty to approach this Tribunal by way of filing a fresh CP, in case, they are aggrieved by the actions taken during the said EGM to be conducted;

5) The other reliefs, which are not granted now, are rejected as having no grounds/merits to interfere;

6) Since the main Company petition is disposed of, CA No.68 of 2016 also stands disposed of.

7) No order as to costs."

"As the 1st Respondent Company failed to respect the above orders of the Hon'ble NCLT dated 26-10-2017, this Comprehensive Company Petition is filed by the Petitioners exercising the right available under the above Orders and also under Sections 241 and other applicable provisions of the Companies Act, 2013 as the grievances complained herein are continuing acts which are serious in nature and continuing to be oppressive to the petitioners and are serious acts of continuing gross mismanagement of the affairs of the 1st Respondent Company by the other Respondents, as explained in detail herein."

3. This application is resisted by respondents on several grounds including on the ground of maintainability by filing counters.

4. We have heard the learned counsel for the petitioners Dr.S.V.Ramakrishna, and learned counsel for respondents Mr.K.Rajendran. Perused the record.
5. At the outset we wish to state that since it is the admitted case of the Company Petitioners that the first respondent Company failed to respect the order of this Tribunal passed in CP No.40 of 2011 dated 26.10.2017, as such the present petition has been filed in exercise of the rights available to the petitioners under the aforementioned order and the liberty given to the petitioners in terms of Clause 4 of the Order in CP No.40/2011, the maintainability of this Company petition since questioned, we proceed to examine the maintainability of this Company Petition. In the light of Section 424(3) of the Companies Act, 2013 Read with Rule 56 of NCLT Rules, which is as below:

Procedure before Tribunal and Appellate Tribunal.— (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Thus, on a plain reading of s. 424(3) it is clear that, for the purpose of enforcement of an order of Tribunal or Appellate Tribunal passed under the provisions of the Companies,Act,2013, the Tribunal shall be deemed to a Civil Court and the order to be enforced is a **deemed decree**.

6. That apart, Rule 56 of NCLT Rules, provides for execution of order passed by the Tribunal, upon the holder of an order making an application to the Tribunal in **Form NCLT.8**.

7. Here we find it useful to refer to Rule 56 of NCLT rules which is as below:

56. Application of execution:- For execution of order passed by the Tribunal, the holder of an order shall make an application to the Tribunal in **Form NCLT.8**.

8. Rule 57 provides for the procedure of execution which is as below:

57. Issue of process of execution:- (1) On receipt of an Application under Rule 56 the Tribunal shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908(5 of 1908).

(2) The Tribunal shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such form as provided in the Code of Civil Procedure, 1908(5 of 1908), as the case may be.

9. Therefore, an efficacious and proper remedy is available, to the petitioners who are equipped with the order in Company

Petition 40 of 2011 in terms of the provisions stated supra. However, instead of availing the same the petitioners have filed present company petition under Section 241 of the Companies Act, seeking enforcement of the order in CP No.40/2011, claiming that acts now complained of are in continuation to the acts complained of in CP No.40/2011.

10. In so far, the contention that this Company Petition is filed pursuant to the liberty granted to the petitioners in terms of Clause 4 of the order in CP No.40/2011, as such the same is maintainable, we are of the view that such a plea is untenable and un sustainable under law, in as much as, this Tribunal vide Clause 4 of its order in CP No.40/2011 had categorically stated that “if petitioners are aggrieved by the actions taken during the EGM to be conducted in terms of Clause 2&3 of the aforementioned order” then the petitioners can approach this Tribunal by way of filing fresh Company petition. Admittedly, since no EGM had been conducted as per the terms supra, the plea that this Company petition is filed pursuant to the liberty given to the petitioners under the

aforesaid final order of main Company petition 40/2011 is misconceived, hence we hereby reject the same.

11. We find that this Tribunal as per Para 28(4) of its order has given liberty to file a fresh Company Petition if they are aggrieved by the actions taken during the EGM but till date no EGM could be conducted, hence question of filing of this Company Petition of aggrievement of actions of EGM does not arises. We have examined the maintainability of the Company Petition,
12. We therefore in the light of our discussion as above, are not inclined to entertain the present Company Petition. Hence, we hereby reject the same. However, we leave it open to the petitioners to take appropriate remedies for execution of the orders passed in CP no.40/2011 as per law.
13. Therefore, Company Petition is hereby rejected however, without costs.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

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