

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI**

I.A/57/KOB/2020

IN

TCP/61/KOB/2019

*(Under Rule 11 of the NCLT Rules read with Order VI Rule 17 of the Civil
Procedure Code)*

Order delivered on: 14.03.2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)

1. Ashraf Kakkodi,
Director & Shareholder
Residing at Pulparambil House, 17A (43/1861f)
Kottooli Post, Kuthiravattom,
Kozhikode – 673 016.

2. P.V Suhara,
Shareholder,
Residing at Pulparambil House, 17A (43/1861f)
Kottooli Post, Kuthiravattom,
Kozhikode – 673 016.

...Petitioners

Versus

1. PVH Steels Private Limited
Registered Office at PVH Chambers,
Kuttikattor, Calicut,
Kerala – 673 008.

2. PadinjaraVeetilHussan
Director,
Star View, Puthukudi Nagar,
Kottuli, Kuthiravattom
S.O. Kozhikode, Kerala – 673 016.

3. PuthenVeettil Arshad
Managing Director,
Puthenveetil, AidanaKallepully,
Puthur, Palakkad, Kerala – 678 001.

4. Kuttiporichathil Mohammed Abdul Hakeem
Director,
Kuttiporichathil House,
AtholiKozhikode, Kerala – 673 315.

...Respondents

Parties/Counsel Present (through video conference)

FOR APPLICANTS : SHAMEEM AHAMED & CYRIAC TOM, Advocates
FOR RESPONDENTS : KSR & CO

ORDER

This IA No.57/2020 has been filed under Rule 11 of the National Company Law Tribunal Rules read with Order VI Rule 17 of the Civil Procedure Code for the Amendment of the Company Petition to include additional reliefs by the Petitioner in TCP/61/KOB/2019, seeking the following reliefs:

In Para No. 11- "Relief Sought", after clause (m), the following reliefs may be added.

m) To declare that the Annual General Meeting conducted on 1.11.2019 is invalid and to quash all decision taken in the AGM including the resolutions against the reappointment of the 1st Petitioner.

n) To quash the DIR-1 filed by the Respondent with the Ministry of Corporate Affairs for the removal of the 1st petitioner.

2. The brief facts of the case are that after filing of Company Petition before the NCLT, Chennai Bench, the Chennai Bench had passed an interim order restraining the Respondents from giving effect to the decisions taken, if any, in the EGM dated 06/06/2019 with regard to the removal of the 1st Petitioner from the directorship. The petitioners received a notice for convening Annual General Meeting (AGM) on 14/10/2019 to which, the petitioners wrote a letter dated 15/10/2019 to the respondents. Again, the petitioners were served with a notice dated 22/10/2019 for convening an AGM on 1/11/2019 in which one of the agenda was appointment of Directors or reappointment in place of P.V Hassan

(Respondent No. 2), Abdul Hakeem (Respondent No. 4) and Ashraf Kakkodi (1st Petitioner), who were to retire at the AGM scheduled on 1/11/2019.

The Petitioners had sent a reply dated 30/10/2019 to the notice dated 22.10.2019, raising objections as under:

- i. The board meeting dated 14/10/2019 for convening the AGM is invalid as the notice of the said Board Meeting is dated 09/20/2019. The said notice was received by the Petitioners only on 14/10/2019 i.e., the date of the Board Meeting.
- ii. Respondents have not complied with the requirement of minimum notice period of 21 days for convening an AGM as the notice of AGM was dated 22/10/2019. Further, the AGM is not held within the prescribed period of 6 months from the close of the financial year.
- iii. The issue regarding removal of the 1st Petitioner as a Director is pending consideration before the NCLT and therefore requested the Respondents not to take any such hasty actions.

Without considering the objection raised by the Petitioners, the 1st Petitioner was removed from the directorship, even though there was an interim order passed by the NCLT Chennai Bench on 7/6/2019.

3. It is stated that since the shareholders of the Company are family members comprising of father, mother and their 3 daughters and their respective husbands, of the respective families shall have equal right in the business of the 1st respondent company and requires equal representation of all the families concerned. Hence, the decision taken on 1/11/2019 is against the spirit of the understanding among the family members and that the removal of the 1st Petitioner is prima facie invalid because of the non-compliance with the mandatory provisions under the Companies Act, 2013.

4. In view of the above facts the petitioners sought to quash the decision taken on 1/11/2019, since the impugned AGM was conducted after the filing of the Company Petition, the subsequent development could not be incorporated in the Company Petition and, therefore, the amendment of the main Company Petition to incorporate the aforesaid prayers is required in order to decide the real question in controversy between the parties.

5. The respondents opposed the application by filing a counter denying all the averments in this application. They have stated that in the counter filed by them in the main Company Petition on 24/11/2019 it was specifically stated that the removal of the 1st Petitioner and the copy of the notice dated 22/10/2019 for holding the AGM along with the minutes of the AGM dated 1/11/2019 have already been annexed with the counter as Annexure Nos. 19 & 20 respectively. The alleged AGM has been duly convened and properly conducted within the terms of the Article of Association and the provisions of the Act, at a place that is near to the Registered Office of the Respondent Company. Hence, this Petition is not required at all and it is filed only to prolong the case on one or other pretext to harass the Respondents who are managing the day today affairs of the Company.

6. The Notice of the AGM dated 22/10/2019 had been clearly sent to the Petitioners and the agenda items had also been clearly specified. Items 2, 3 & 4 related to the appointment of Directors who retired by rotation at every AGM. From the minutes of the AGM held on 1/11/2019, it is understood that all the Directors' appointment had been put into motion

and the appointment of Petitioner No. 1 voted against by majority. Members representing 75% of the vote present voted against the resolution proposing his reappointment. Therefore, there is no confusion with regard to the holding and passing of such resolutions as they were all done following the provisions and for the best interests of the functioning of the Respondent Company and that the Petitioners have attended the AGM held on 1/11/2019. The Applicants/Petitioners have not made out any case for interfering with the rights of shareholders at any General Meeting.

7. With respect to the averments in the application regarding the interim order passed by the NCLT, Chennai Bench, the respondents state that they reserve a right to argue the same, but they are not denying that there is an interim relief. As per the Articles of Association of the Company, being private company, it is sufficient to give “7 days” notice. The petitioners are aware of the same and they are now raising untenable contention for the sake of it by saying “21 days” advance notice is mandatory. Further, holding AGM on 1/11/2019 beyond the due date by itself does not render the AGM invalid.

8. The respondents further state that while Applicants/Petitioners seek amendment of prayer clause invoking inherent powers of this Tribunal, the IA does not speak about any pleadings to support the leave sought to amend the prayers in the Company Petition. This single aspect itself clearly establishes the fact that this IA is only an attempt to protract the proceedings as far as possible.

9. We have heard Shri. Shameem Ahamed the counsel for the Petitioners and Dr. K.S Ravichandran learned PCS appeared for the respondents through video conferencing. We have also thoroughly perused the whole case records including IA as well as the reply thoroughly. It appears that even if the amendment as sought by the petitioners is allowed, the cause of action will remain same besides it will rather help both the parties i.e., the respondents and the petitioners arrive at a judicial decision.

10 Moreover, there is an interim order passed by the NLCT Chennai Bench restraining the Respondents from giving effect to the decisions taken, if any, in the EGM dated 06/06/2019 with regard to the removal of the 1st Petitioner from the directorship. When such an interim order has been passed and the matter is sub judice, the action taken to remove the 1st Petitioner from the directorship is to be gone into while considering the main Company Petition. Hence, we are of the considered opinion that the amendment sought for by the Petitioners is to be allowed.

11. In view of the facts stated above, IA/57/KOB/2020 is allowed. Petitioners are directed to file amended copy of the Company Petition serving a copy to all the respondents within 2 weeks from the date of receipt of a copy of this order.

Dated this the 14th day of March, 2022

Sd/-
(Anil Kumar. B)
Member (Technical)

AJ

Sd/-
(Ashok Kumar Borah)
Member (Judicial)