IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CA/08/KOB/2021
In
TCP/07/KOB/2019

(Under Rules 11 and 32 of NCLT Rules, 2016)

Order delivered on **11th day of June, 2021**

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

In the matter of

Applicant/Petitioner

Haris P.M. S/o P.K. Muhammed
Formerly resident of B-2, Flemingo
Green Acres, Tatapuram, Ernakulam
Presently residing at House No.34/248C
Vivekanand Nagar, Padam Road,
Elamakkara, Ernakulam-682026.

Versus

Respondents/Respondents

1. M/s Mark and Orion Ventures (P) Limited
2. Mohamed Rias
3. Shamsudheen Kunjumarakkar Valiyaveetiparambil
4. Abdul Jabbar
5. Registrar of Companies, Kerala

Parties/Counsel present (through video conference)

For the Applicant	:	Mr.C.K.Karunakaran, Advocate
For the Respondents	:	Mr.Madhu Namboodiripad (R 1&2)
		Mrs. Rema Smrithi, Advocate (for R3)
		Mr. Keerthi Vas Giri, Advocate (for R4)

ORDER

This Order has arisen upon the application CA/08/KOB/2021 filed under Rules 11 and 32 of NCLT Rules 2016 by the Petitioner in TCP/7/KOB/2019 seeking amendment of the Company Petition.

2. In the Application it is stated that on 05.12. 2020 Petitioner received an e-mail from the Respondent No.2, in which it is stated that Respondent Company issued notice dated 30.11.2020 to conduct the 11th,12th, 13th, and 14th Annual General Meetings for the years ended on 31.03.2016, 31.03.2017, 31.03.2018 and 31.03.2019 respectively to be held on 11.12.2020. The above notices to conduct the meetings were challenged before this Tribunal in IA/212/KOB/2020 in TCP/07/KOB/20219. IA/212/KOB/2020 stands disposed of vide order dated 10.12.2020 as under: -

> *"Upon hearing of the parties and on perusal of the materials on record, this Tribunal is of the opinion that the relief to stay the AGMs to be held on 11.12.2020 cannot be granted. However, the respondents are directed that the decisions/resolutions/business taken in the ensuing AGMs be kept in abeyance until further orders. It is made clear that respondents are at liberty to take recourse to avail the benefit of "Companies Fresh Start Scheme 2020" if such a course is necessary."*

3. It is further stated that among the aforementioned AGM's proposed, only the 11th AGM for the financial year 2015-2016 was conducted on 11.12.2020 and that other AGM's were adjourned stating that the venue fixed for the 12th AGM was wrong. Subsequently the 12th ,13th and 14th AGM's were convened on 26.12.2020. Notice to conduct the 15th Annual General Meeting for the Financial year 2019-2020 was issued fixing the date on 26.12.2020. However, the 15th AGM was adjourned stating that the Balance Sheet and P&L statement for the year 2019-2020 were not prepared. The 15th AGM was thereafter held on 02.01.2020.

4. It is further stated that in the 11th AGM for the Financial year 2015-2016 the Balance Sheet and P&L Statement were presented only at the meeting and not circulated to the Shareholders at any time prior to the meeting. There was no Auditor's Report or Director's Report presented or passed by the Meeting. The Balance Sheet and Profit and Loss Account for the said year was approved and passed without considering the objections from the petitioner and other minority shareholders.

5. It is also stated that along with the adjournment notices of the 12th ,13th and 14th AGM's, the Company had circulated Independent's Auditors Report and the Balance Sheet and Profit and Loss Accounts as on 31.3.2017, 31.03,2018 and 31.03.2019. No Directors Report was circulated or presented at the meeting.

6. In the 15th Annual General Meeting the Petitioner had objected to the lack of notice of the Balance Sheet and P&L and non-circulation of the Director's Report and Auditors Report. Despite objected to by the Petitioner and other minority shareholders, the Balance Sheet and P & L Account was passed.

7. The aforementioned developments happened subsequent to the filing of the Company Petition and the order dated 10.12.2020 in IA/212/KOB/2020 are further instances of Oppression of minority shareholders and mismanagement of the affairs of the Company. Therefore, the petitioner sought the permission of this Tribunal to amend the Memorandum of Company Petition.

8. Respondent Nos.1 and 2 filed their counter and stated that it is a settled position of law that the matters transpired till the date of filing of the original Company Petition shall be looked into by the Tribunal and the pleading in the above petition was completed and the matter is posted for final hearing. It is also stated that even though the Petitioner had attended the meetings and voted against the resolutions for approving the accounts, the resolutions were passed with a majority as required under the Companies Act, 2013.

9. It is further stated that Respondent Nos. 1and 2 filed IA/07/KOB/2020 questioning the maintainability of the Company Petition on account of the fact that the pleadings do not contain the ingredients to invoke the jurisdiction of this Tribunal under Section 241-242 of the Companies Act,2013.

10. Respondent No.3 filed the counter and stated that he is an investor, shareholder and Director of the Respondent No.1 Company. The main Company Petition was filed subsequent to dismissal of a CP /10 of 2018 filed by the Petitioner at NCLT, Chennai against the Respondents. The Petitioner thereafter has filed TCP 8 of 2019 before this Tribunal under Section 213,241-242 of the Companies Act,2013. Section 422 of the Companies Act 2013 also gives a time frame to the Tribunal to dispose of an Application/Petition/Appeal within 3 months from filing of the same. Hence, it can be rightly assumed that the NCLT Rules framed never envisaged a scenario where events that have happened 2-3 years after filing of the Company Petition should be considered and reliefs sought duly amended.

11. The order dated 10.12.2020 passed by this Tribunal allowed the Respondents to take advantage of the "fresh start scheme,2020" and regularise and up-to-date the filings pending before the RoC. The "fresh start scheme 2020" allowed the Respondents to hold all the pending AGMs and file the necessary documents like annual audited accounts etc and effect statutory compliance before the ROC, Kerala. This is a one-time scheme offered by the Ministry of Corporate Affairs for statutory compliance so as to avoid penalty and striking off of the Company from the records of RoC. This Tribunal expressly allowed the Respondents to undertake such a venture and the Petitioner having actively participated in the said meetings and having been appraised and being privy to all the discussions and resolutions made in the above mentioned AGMs cannot cry foul and seek quashing the entire AGM proceedings for merely not accepting the objections he had raised at the said AGMs. The Respondent company had judiciously noted the objections raised by the Petitioner and passed the resolutions, audited accounts and conducted all the other businesses at the AGMs after getting the same passed with the assistance of majority members as is required under law. It may be noted that the “fresh start scheme" is an extraordinary process and as such does not stick to the ordinary process of holding AGMs etc as per the procedure laid down in the Companies Act 2013. The

Petitioner, therefore, is misleading this Tribunal by harping on procedural irregularities.

12. It is further stated that the main Company Petition is posted for final hearing as all the pleadings are completed. At this point of time, the Petitioner has come up with this IA to stall the final hearing seeking amendment.

13. In the present case, while discussing the scope of permitting amendments, this Tribunal examined whether the proposed amendment substantiate, elucidate and expand the pre-existing facts already contained in the original pleadings. In the application, the Applicant alleges the subsequent events of acts of oppression and mismanagement occurred in the Respondent Company while conducting the Annual General Meetings.

14. It appears from the records that the original Company Petition was filed on 03.07.2019 before the Chennai Bench. The Applicant alleged procedural irregularities occurred while convening the Annual General Meetings to avail the benefit of the *"Companies Fresh Start Scheme 2020"* for the financial years 2015-2016, 2016-2017, 2017-2018, 2018-2019 according to the Companies Act, 2013. The complaint of the Applicant in the Original Company Petition is that no AGM for the Financial Years 2015-2016 and 2016-2017 was conducted.

15. At this juncture it is pertinent to consider the decision in ***Karedla Suryanarayan and othes Vs. Sri Ram Dass Motor Transport (P) Ltd. and others (1998) 1 Com LJ 342 (CLB)***, which states that "…………………*Subsequent* *events brought on record alone in case the main petition fails on the merits cannot entitle a person to any relief. In case the allegations in the main petition are proved then the subsequent events may be taken into consideration by the Board in moulding suitable relief."*

16. In the order of this Tribunal dated 10.12.2020 in IA/212/KOB/2020 it was ordered that '***the decisions/ resolutions/ business taken in the ensuing AGMs be kept in abeyance until further orders'.*** Therefore, the subsequent events alleged by the Applicant in this Application is already under consideration of this Tribunal, but such consideration would be only to mould the relief to be granted in case the petitioner succeeds in the main petition. Hence, this Tribunal is of the opinion that only based on the conclusion that whether the petition is maintainable or not, then only subsequent events can be considered to do complete justice between the parties and to make appropriate orders for removing the oppression and mismanagement in the Respondent Company.

17. With the above observations CA/08/KOB/2021 is dismissed

Dated this the 11th day of June 2021

Sd/-

(***Ashok Kumar Borah)***

Member (Judicial)