

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No. 10 of 2021

Under section 421 of the Companies Act, 2013)

**(Arising out of Interim Order dated 10.02.2021 passed in CP/794/2020
passed by the National Company Law Tribunal, Division-II, Chennai)**

In the matter of:

M.s. Muralidharan

Address: Old No. 49, New No. 109, Satyadev Avenue, MRC Nagar,
Chennai - 600 028, Tamil Nadu, India.

(Appellant 1)

Hrisha Consulting Private Limited

Address: Old No. 49, New No. 109, Satyadev Avenue, MRC Nagar,
Chennai- 600 028, Tamil Nadu, India.

(Appellant 2)

And

M/s. Technology Frontiers (India) Private Limited

Registered Office Address: Plot No.38 Developed Plot Industrial Estate
Perungudi Chennai – 600096, Tamil Nadu, India.

... Respondent 1

Ms. Mangalam Srinivasan Office

Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai - 600096, Tamil Nadu, India.

... Respondent 2

Mr. Rajesh Kamat Office

Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai. 600096, Tamil Nadu, India.

... Respondent 3

Mr. Vivek Raicha

office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai - 600096, Tamil Nadu, India.

... Respondent 4

Mr. Paul Aiello

office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai. 600096, Tamil Nadu, India.

... Respondent 5

Mr. Suresh Prabhala

Office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai - 600096, Tamil Nadu, India.

... Respondent 6

Mr. Mayank Agarwal

Office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai 600096, Tamil Nadu, India.

... Respondent 7

Mr. Balamurugan IAS

office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai 600096, Tamil Nadu, India.

... Respondent 8

Mr. Chee Chong Tam

Interim Judicial Manager
Global Sports Commerce Pte. Ltd
No. 20, Cecil Street, 09-05 Plus, Singapore 049-075.

... Respondent 9

Crest Investment Holding Pte. Ltd

Address: No.1, Kim Seng Promenade, No.13-11 West Tower,
Great World City, Singapore 237994.

... Respondent 10

Em Holdco I Pte. Ltd

No.10, Changi Business Park Central 2, No.05-01, Hansapoint at CBP,
Singapore 486030

... Respondent 11

Present:

For Appellant	: Mr. K. Gaurav Kumar :Practising Company Secretary
For Respondent No. 3,4,5 & 11:	Mr. Nikhil Sakhardande, Sr. Advocate :Mr. P. Giridharan, Advocate
For Respondent No. 7	: Mr. P.H. Arvindh Pandian, Sr. Advocate : Mrs. Gauri Rasgotra, Advocate

ORDER
(VIRTUAL MODE)

Heard Mr. K. Gaurav Kumar, Practising Company Secretary appearing for the 'Appellants' as well as Learned Senior Counsel Mr. P. H. Arvindh Pandian appearing for Respondent No. 7 (Caveator) and Mr. Nikhil Sakhar Dande, Learned Senior Counsel appearing for Respondent No. 3 to 5 and 11 on behalf of Mr. P. Giridharan, Learned Counsel.

2. It is the case of the 'Appellants' that the draft resolution was not circulated to the 'First Appellant', which ought to have been circulated to all the Directors of the First Respondent Company as per section 175 of the Companies Act, 2013 read with Clause 6.2 of the Secretarial Standards of Meeting of Board of Directors. As such, it is the stand of the 'Appellants' that the 'Tribunal (National Company Law Tribunal, Chennai Bench) in Cp No. 794/2020 was not

correct in not granting the 'Interim Relief' of suspending the circular resolutions dated 03.11.2020, which was passed in negation of 'Articles of Association' of the Company. In this connection, on behalf of the 'Appellants' it is pointed out that Clause 22.4 of the Articles of Association speaks of to the effect that 'A Circular resolution shall be deemed to have been duly passed by the Board, if it has been approved in writing (which include confirmation via electronic or other means) by a majority of directors constituting the Board for the time being'. By placing reliance on Clause 21.3 of the Articles of Association of the Company, the Practising Company Secretary for the 'Appellants' projects an argument 'majority includes' the consent of the 1st Appellant' and further that the stand of the 'Appellants' is that the resolution was not served to the 'First Appellant' and as such, the Resolution was passed without any authority and in violation 'Articles of Association' of the Respondent No. Company and resultantly ultra vires.

3. On behalf of the 'Appellants' a contention is raised that the 'Tribunal', while passing the impugned order was not right in issuing direction to consider creating an 'Interim Committee' to run the day to day affairs of the First Respondent/Company, instead of referring the matter to 'Mediation' as per section 442 of the Companies Act, 2013. Apart from this, the Tribunal was not correct in making an observation in the 'Interim Order' dated 10.02.2021 in the main Company Petition that the Company was not run by the 'First Appellant', when the 'First Appellant' had borrowed personal loans and infused further finances to pay the salary and other expenses, to keep it as a 'going concern'.

4. Per contra, it is the submission of Learned Senior Counsel Mr. P.H. Arvindh Pandian appearing for Respondent No. 7/Caveator that although the First Appellant was not served with the notice of Resolution by circulation but his Learned Counsel was served in this regard, and further the 'First Appellant' after coming to know about passing of the Resolution had given his reply and as such ,the 'First Appellant' cannot have any grievance about non issuance of any circular Resolution.

5. According to the Learned Senior Counsel Mr. P. H. Arvindh Pandian for the Respondent No. 7, the 'First Appellant' in is email dated 06.11.2020 had stated that he received everything on 05.11.2020 and further that the 'First Appellant' had resigned.

6. At this stage on behalf of the Respondent No. 7, it is brought to the notice of this 'Tribunal' the email dated 14.04.2020 sent by the 'First Appellant'

addressed to Respondent No. 6 shows that only a 'decisive action' was sought for and as such, the 'First Appellant' cannot have any grouse in this regard.

7. The other argument projected on the side of the Respondent No. 7 is that the 'First Appellant' is also roped in, in the 'Interim Committee' as suggested by the National Company Law Tribunal, Division Bench II, Chennai in CP No. 794/2020 (vide its order dated 10.02.2021) to run the day to day affairs of the Respondent No. 1/Company and as such, the 'First Appellant' cannot have any real complaint.

8. Conversely, Mr. Nikhil SakharDande, Learned Senior Counsel for the Respondent No. 3, 4, 5 & 11 submits that Section 241 of the Companies Act, 2013, speaks of 'Oppression' and even an illegal act which is not 'oppressive' in nature cannot be challenged and in respect of section 175 of the Companies Act, 2013, the same being complied with, the 'First Appellant' got the 1st draft for circular resolution and offered his comments and as such, it cannot be characterised as an oppressive one in the eye of Law. Further more, there is a Singapore Court order and it cannot be side tracked when the 'First Appellant' has not been ousted and being a part of the 'Interim Committee'. Therefore, there is no oppressiveness as alleged by the 'First Appellant'.

9. Be it noted, that section 5(1) of the Companies Act, 2013 speaks of 'Articles' of a Company containing such matters, as may be prescribed etc. Section 6 of the Companies Act, 2013 enjoins that the provisions of the Companies Act, 2013 will override 'Memorandum', 'Articles' of a Company etc.

10. On a careful consideration of respective submissions advanced on either side, this 'Tribunal' without delving deep, at this juncture, is of the prima facie view that the implementation of the 'Circular Resolution' dated 03.11.2020 is to be stayed in respect of First Respondent/Company, in furtherance of substantial cause of justice and accordingly, stays the implementation of Circular Resolution dated 03.11.2020 till the next date of Hearing, 11.06.2021.

11. In the meanwhile, it is open to the Learned Counsel for the Respondent No. 7 and Learned Counsel for Respondent No. 3, 4, 5, & 11 to file a detailed Reply/Response/Counter to the main appeal (not only through e filing and also through Hard copy before the 'Office of the Registry') and the copy of the same shall be served to the 'Appellants Side' before 07.06.2021.

12. Soon after the receipt of the Reply/Response/Counter of the respective parties, it is open to the 'Appellants' to file 'Rejoinder' if any, (not only through

e filing and also through Hard copy before the 'Office of the Registry), of course, after serving to the Learned Counsel for Respondent No. 7 and Respondent No. 3, 4, 5 & 11.

In respect of Respondents No. 1, 2, 6, 8, 9 & 10, Let notice be issued through Speed Post returnable by 11.06.2021. Let the Requisite together with process fee be filed by the Appellants within 3 days from today. Notice to the Respondents No. 1, 2, 6, 8, 9 & 10 is also directed to be issued to the e-mail address of the said Respondents, in the event of Appellants furnishing the same. Mobile number(s) of the Respondents No. 1, 2, 6, 8, 9 & 10 may also be furnished by the Appellants to the 'Office of the Registry'.

The 'Office of the Registry' is directed to List the matter on 11.06.2021.

[Justice Venugopal M]
Member (Judicial)

[V. P. Singh]
Member (Technical)

23.04.2021

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