

(2023) 04 DEL CK 0036

In the Delhi High Court

Case No : CO.A(SB) No. 57 Of 2015, CO.APPL. No. 3700 Of 2015, 219 Of 2017

Priya Jain

APPELLANT

Vs

Laguna Holdings Pvt. Ltd. & Ors.

RESPONDENT

Date of Decision : 12-04-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10

Companies Act, 1956 — Section 2(13), 10F, 111, 397, 398, 399, 402, 403, 405

Companies Act, 2013 — Section 59

Citation : (2023) 04 DEL CK 0036

Hon'ble Judges : Sanjeev Narula, J

Bench : Single Bench

Advocate : Harish Malhotra, Rajiv Bahl, Vikas Tomar, Darpan Wadhwa, Ruby Singh Ahuja, Varun Khanna, Akshay Aggrawal, Vasu Singh, Megha Dugar, Aditi Mohan, Neelakshi Bhaduria, Sidharth Aggarwal

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. The present appeal under Section 10F of the Companies Act, 1956 [hereinafter "the Act"] is directed against order dated 23rd September, 2015 [hereinafter "Impugned Order"], whereby Appellant's application bearing C.A. No. 79/2015 for impleadment to an oppression and mismanagement petition [C.P. No. 108/ND/2014.] pertaining to Respondent No. 3-Eden Park Hotels Pvt. Ltd., has been rejected by the Company Law Board [hereinafter "CLB"] [Presently pending before the National Company Law Tribunal, New Delhi [hereinafter "NCLT"].].

2. For convenience, parties to the present appeal, their status before the CLB and their inter se relationship, is depicted as follows:

PARTY IN THE PRESENT APPEAL

NAME/ DESCRIPTION

PARTY BEFORE THE CLB

INTER-SE RELATIONSHIP OF THE PARTIES TO THE APPEAL

Appellant

Ms. Priya Jain

Applicant in C.A. No. 79/2015 (for impleadment)

Former Shareholder of Respondent No.

3

Respondent No. 1

Laguna Holdings Pvt. Ltd.

Petitioner No. 1

Shareholder of Respondent No. 3.

Respondent No. 2

Ms. Usha Jain

Petitioner No. 2

Shareholder of Respondent No. 3.

Respondent No. 3

Eden Park Hotels

Pvt. Ltd.

Respondent No. 1

The Company in question.

Respondent No. 4

CLG Hotels and Resorts

Pvt. Ltd.

Respondent No. 2

Shareholder of Respondent No. 3.

Respondent No. 5

Mr. Sushil Gupta

Respondent No. 3

Chairman-cum- Director of

Respondent No. 3.

Respondent No. 6

Mr. Sandeep Gupta

Respondent No. 4

Director of Respondent No. 3.

3. The Impugned Order captures the backdrop of Appellant's grievance, rendering reiteration of facts superfluous; however, a concise overview is presented below for contextual clarity.

3.1 There are two groups of shareholders in Respondent No. 3. Respondents No. 1 and 2, who hold 50% of the equity share capital, constitute the "DKJ Group" and Respondents No. 4 to 6, holding the remaining 50% of the equity share capital are the "SKG Group".

3.2 Mr. D.K. Jain deceased on 18th March, 2014 and is survived by three daughters and one son. Given the internal differences within the family, post the demise of Mr. D.K Jain, his widow, Ms. Usha Jain, and daughter, Ms. Puja Jain, have been running their family businesses.

3.3 During the lifetime of D.K Jain, his youngest daughter, the Appellant, was appointed in Respondent No. 3, as a nominee director on behalf of DKJ Group.

3.4 Company petition was filed by DKJ Group under Sections 111, 397, 398, 399, 402 and 403 of the Act claiming that SKG Group had been engaging in acts of oppression and mismanagement concerning Respondent No. 3.

3.5 On account of lack of representation on the Board of Directors, DKJ Group filed an application [C.A. No. 155/2014] praying for, among other things, directions to prevent action in furtherance of the minutes of the Board of Directors meetings of Respondent No. 3 held on 22nd September and 22nd November, 2014. It was contended that Appellant had been removed as nominee director and one Mr. Rajan Sharma along with Mr. Mahesh Gupta (in place of Late Mr. D.K. Jain) were appointed on the Board of Directors.

3.6 On 18th December, 2014, the CLB issued several directions, including instructions to Respondent No. 3 not to implement the decisions taken in the afore-said board meetings. The CLB also directed the SKG Group to take two nominee directors of the DKJ Group on the Board of Respondent No. 3. With respect to the prayer for not treating Appellant as the nominee director of DKJ Group, the CLB ruled that since a company petition has been filed concerning the transfer of Appellant's entire shareholding (a mere 0.5%), her involvement in Respondent No. 3 could not be perceived as representing the DKJ Group. Consequently, Appellant's directorship was ordered to be kept in abeyance until further orders.

3.7 Subsequently, Appellant filed an application [C.A. No. 79/2015] seeking impleadment and permission to file a counter affidavit to oppose the petition.

This request was turned down in the Impugned Order.

APPELLANT'S SUBMISSIONS

4. Mr. Harish Malhotra, Senior Counsel representing the Appellant, submits that the Impugned Order is liable to be set aside on the following grounds:

4.1 Appellant, along with her father late Mr. D.K. Jain were appointed as the two nominee directors to represent DKJ Group. Appellant has admittedly never been removed or replaced as the nominee director during the lifetime of late Mr. D.K. Jain. Appellant has been a nominee director more than ten years without any complaint. Record would reveal that she had opposed SKG Group as and when they committed illegal acts and always protected the interest of DKJ Group as well as Respondent No. 3.

4.2 Relief under Section 111 of the Act and Section 59 of Companies Act, 2013 for transfer of Appellant's shareholding could not have been sought without impleading Appellant as a party.

4.3 There is no allegation of misconduct against the Appellant. There is also no allegation in the main petition that she had acted against the interests of DKJ Group or colluded with SKG Group. However, in C.A. No. 155/2014, false allegations were made against Appellant to remove her from the position of the nominee director. No date is mentioned in the petition or in C.A. No. 155/2014 regarding Appellant's alleged removal as the Nominee Director of the DKJ Group. Further, no resolution or copy of notice to the Appellant pertaining to alleged removal has been produced or is on record.

4.4. Only a member of the family/ relative of Late Mr. D.K. Jain could be appointed as a nominee director under the Articles of Association [hereinafter "AoA"] read with Shareholders Agreement [hereinafter "SHA"] dated 19th March, 2015. Thus, appointment of Mr. Mahesh Gupta and Mr. Rajan Sharma as nominee directors, in place of Late Mr. D.K. Jain and Priya Jain, respectively, is unauthorised as they did not meet the aforesaid criteria. Further, as per the AoA read with SHA, the term of directorship is to "continue" and cannot be terminated, as is being sought to be done by the Respondents No. 1 and 2. Appellant's removal was not in compliance of the AoA and the provisions of the Act. The foregoing factors have been overlooked by CLB.

4.5. CLB passed the Impugned Order in violation of principles of natural justice by not affording an opportunity of hearing to the Appellant. Appellant has a right to defend herself and therefore, should be impleaded as a party particularly since her directorship has been suspended under the directions of the CLB.

4.6. CLB has wrongly held that a nominee director is not a "director" under Section 405 of the Act, thereby disentitling her to seek relief from CLB. The definition of the term "director" under Section 405 of the Act has to be interpreted as per Section 2(13) of the Act, wherein 'director' includes a nominee director.

4.7. CLB committed grave illegality by relying on false and frivolous contents of application C.A. No. 155/2014 which had already been withdrawn on 15th July, 2015.

4.8. Appellant is a necessary and proper party for adjudication of company petition which is now pending consideration before NCLT.

RESPONDENTS NO. 1 AND 2'S SUBMISSIONS

5. Per Contra, Mr. Darpan Wadhwa, Senior Counsel representing Respondents No. 1 and 2, submits that:

5.1 Pursuant to the demise of Mr. D.K. Jain, Appellant started acting against the interests of Respondent No. 3 which led to withdrawal of her nomination in terms of the AoA.

5.2. DKJ Group withdrew nomination of Appellant vide letter dated 19th September, 2014 which was ratified by Respondent No. 1 in the Board meeting dated 09th October, 2014. In the said meeting, Mr. Rajan Sharma was also nominated in place of the Appellant and this decision was communicated to Board of Directors of Respondent No. 3 on 17th November, 2014.

5.3. Appellant continues to act against Respondent No. 3 as is evident from the prayer clause in C.A. No. 79/2015 wherein she indicates her intent to oppose the company petition.

5.4. Appellant had already transferred her shareholding in Respondent No. 3 to Ms. Usha Jain, which stands recorded in order dated 31st March, 2016 in C.P. No. 36/59/2014. Therefore, Appellant's allegations of her shareholding are completely misconceived and to that extent, Appellant has no ground for impleadment.

5.5. Appellant has failed to satisfy the requirement of Section 405 read with Order 1 Rule 10 of CPC, 1908. CLB has rightly concluded that the presence of the Appellant is not necessary for proceedings initiated by DKJ Group against the SKG Group.

5.6. Appellant's contention of withdrawal of C.A. No. 155/2014 is misconceived as only C.A. No. 154/2014 was withdrawn on 15th July, 2015.

ANALYSIS

6. Corporate governance can be a complex matter, especially when it comes to the appointment of directors. Disputes can arise when a nominee director's appointment is subsequently withdrawn by the nominating group. The issue at hand is whether a nominee director, who no longer has the support of the nominating group, should be allowed to join a petition seeking relief against oppression and mismanagement against other members/ shareholder groups of the company. Vide the Impugned Order, this question has been decided against the Appellant, as outlined below:

"7. Responding to the submissions of the Applicant Counsel, the Petitioner Counsel stated that she is only a nominee director on Petitioner's behalf by virtue of Article 32A of the Article of Association, which says that a nominee director will continue as a director so long as the nominee director enjoys the pleasure of SKG Group or DKJ as the case may be, if not, the respective Group may remove their nominee directors at anytime by giving 15 days notice to the Board of Directors. Article also says she has no right to continue as nominee director, once the support of the petitioners is taken out. The interest of respective two Groups is usually reflected by the directors nominated by them, in case nominee director acted against the interest of such Group, they may remove the directors nominated by them. It is known proposition that the petitioner or plaintiff is dominus litis to the suit or petition filed by him/her. The petitioners being the shareholders having 50% shareholding in them, they have right to nominate a director of their choice as per the articles of the company, in pursuance of it, Ms. Priya was made nominee director in the past, now, having the petitioners noticed that she has not been cooperating with the petitioners, they moved CA seeking her removal, on such application, Ms Priya has been suspended from continuing as nominee director on the petitioners behalf. It is compelling to the petitioners to see a person supports the cause of the petitioners shall remain on Board, not a person, who works against the wish of them. If Ms Priya has any grievance over his mother or sister over their rights inter se, either they have to resolve, if not, they can approach civil court for declaration to their rights, but not to remedy their grievance in a case filed by somebody. Here, since Ms Priya continued as director, not by virtue of any individual right endowed upon her, therefore, her removal or suspension as nominee director will not become deprivation of her rights. Even if she is allowed to become a party, as to nominee director ship, she cannot continue without the petitioners backing, hence forth, she cannot claim that unless she is made as a party the proceeding, the issues in this petition cannot be adjudicated, especially in a case, where the petitioners made serious allegations against other group alleging that they are not allowed to participate in the functioning of the company and the other group is siphoning the funds of the company, which is prejudicial to the interest of the petitioners group.

8. The Applicant Counsel argued that she is entitled to be impleaded as a party to the proceedings u/s 405 of the Companies Act, 1956 because this Bench has passed an order suspending her to continue as nominee director on Petitioners' behalf without her being heard by this Bench and since she has 50,000 equity shares, she is just and necessary party to this proceeding.

9. On reading Section 405 of the Act 1956, it is obvious that it is applicable to MD or any other director, or manager of a company or any other person, who has not been impleaded as a respondent to the proceeding under sections 397 & 398 of the Act. Here, she is not a director in the sense mentioned there; this section has not spoken anything about nominee director. If an independent director is there, it is applicable to him. It is not applicable to a nominee, suppose nominee

goes against the shareholders interest; there won't be anybody on the Board to represent the persons nominated that director. As to "any person", if this Bench is satisfied, as stated in the section, that there is sufficient cause to add him/her as party, then only CLB will invoke its discretion to add her as a party. Here, this Bench has not noticed any cause to add her as a respondent to this proceeding for adjudication of the issues the petitioners raised against the answering Respondents; hence I do not believe that there is any merit on this score.

10. The Applicant Counsel made another statement stated that the Petitioner themselves filed CA 155/2014 to implead Ms Priya as party to the proceeding, interestingly, when this Bench passed an order in CA 154/2014 suspending Ms Priya continuing as nominee director on the petitioners behalf, the petitioners simply withdrew their CA for impleadment of Ms Priya as nominee director on 15.07.2015. When they themselves asked for relief of her impleadment sometime before, now they could not have objected her to come in as a party to the proceeding. As I already said that there was difficulty with the applicant, for which they sought her impleadment, now the petitioners might be under the belief that she need not become a party for adjudication of the issues raised by them.

11. The Applicant Counsel made another serious allegation saying that P1 who is holding 37.4% shareholding in R1 Company, has not passed any resolution for effecting removal of Ms Priya as nominee director on the Petitioner's behalf. To which, the Petitioner Counsel made a statement that R1 Company already acted on the orders passed by this Bench by replacing her with a person nominated by the petitioners. As to this Argument, I believe that there is no point in allowing the applicant continue as nominee on the petitioners behalf, especially when she filed an application saying the CP filed by her mother against other group as illegal and malafide. It is not her case she has majority in P1 company and she could defeat the resolution moved by P2 in P1 Company.

12. To decide the issues raised against Gupta group in this petition, I don't believe Ms Priya Jain needs to become a party to the CP, hence this application is dismissed without any costs."

7. The Court perceives no flaw in the aforementioned perspective.

(i) DKJ GROUP'S INTERESTS HOLD PRECEDENCE

8. According to the AoA of Respondent No. 3, the DKJ Group is entitled to an equal number of directors on Respondent No. 3's Board, as the SKG Group. The Appellant was a nominee of DKJ Group. Following Mr. D.K. Jain's demise, the Appellant began acting against the interests of her nominating group. Despite DKJ Group's request to SKG Group to not accept Appellant as their nominee director, she continued to act as a nominee director. Due to her lack of cooperation, the DKJ Group intimated CLB that her nomination had been withdrawn and in her place, a new director had been appointed. In such circumstances, when DKJ approached the CLB for interim directions, it was held

that SKG Group was under obligation to uphold the interest of DKJ Group and thus, suspended Appellant's directorship. This was only to ensure that DKJ Group's interests are not jeopardised, pending final adjudication of the proceedings in the company petition.

(ii) APPELLANT HAS CONTRARY INTERESTS TO DKJ GROUP AND PAST ASSOCIATION WITH THE GROUP IS OF NO CONSEQUENCE

9. The Appellant emphatically argues that after obtaining the above interim order, Respondents No. 1 and 2 withdrew the application C.A. No. 155/2014 thereby creating uncertainty as to her status in the proceedings. This contention is controverted by Respondents No. 1 and 2. Additionally, she highlights that in said application, Respondents No. 1 and 2 themselves requested the CLB to include her as a party, and thus, acknowledged her vital role in the adjudication of the company petition. In the opinion of this Court, the above factors do not impact the Impugned Order. The fundamental question remains whether the Appellant is a necessary or proper party for deciding the oppression and mismanagement petition. As the Appellant had begun acting against the interests of the DKJ Group, the nominating group was justified in withdrawing their support to her nomination to protect their interests and representation. The company petition is a contest between two groups with equal shareholding and representation on the board. Since the Appellant no longer had the support of the nominating group, it is implied that she no longer shares the same interests and goals as the DKJ group. As such, her participation in the petition was self-serving and could potentially jeopardize the nominating group's interests. She cannot be allowed to become a party to act contrary to the interest of DKJ Group, which is also evident from the prayer '(a)' of her C.A. No. 79/2015 for impleadment, reproduced as under:

"a) implead Ms. Priya Jain, the applicant as the Respondent No.5 in the aforesaid petition and thereafter permit her to file her counter affidavit in order to oppose the illegal and malafide petition."

[Emphasis Supplied]

10. The Appellant has also argued that during a decade-long past relationship with the DKJ Group, she served as a nominee director and also the Executive Director. She claims that she always acted in the interest of her nominating group, but her appointment was suspended on false grounds that she was not working for the cause of the DKJ Group. The Court finds the Appellant's past relationship with DKJ Group to be irrelevant to the matter at hand. Her assertion that she continues to be a nominee director is misconceived as the AoA stipulates that a nominee director can continue to serve on the Board of Directors only if they have the support of the nominating group. The pleadings on record show that the Appellant no longer has the backing of the DKJ Group, which is essential for a nominee director's continuation. Appellant was to further the interests of DKJ group, but since she was not acting in their interests, she risked losing their

support and being removed from the board.

(iii) NO SUFFICIENT CAUSE UNDER SECTION 405 OF THE ACT

11. The Appellant's reliance on Section 405 of the Act is also misconceived. Section 405 of the Act authorizes the CLB to add directors or "any other person" who was not involved in the proceedings under Section 397 or 398 of the Act. This discretion has to be exercised by the CLB only if there is a valid reason in allowing a person to join the proceedings. In the instant case, since the Appellant no longer has the support of the DKJ Group, she has no right to participate in the proceedings. The Court agrees with the CLB's decision that Appellant has failed to show sufficient cause under Section 405 of the Act to join the proceedings.

12. To make it clear, the Court is not adjudicating whether the Appellant was lawfully removed from her role as a nominee director or the validity of the appointment of the nominee directors in place of Appellant and Late Mr. D.K. Jain. The crucial question is only whether the presence of the Appellant is essential for adjudicating the issues arising in the company petition. It is also essential to point out that the Appellant has challenged the order dated 23rd September 2015, not the interim order issued on 18th December 2014 that had placed her directorship in abeyance. Irrespective, the Appellant's argument that she wishes to participate in the proceedings to defend herself and request the recall/modification of the 18th December 2014 order is without merit. The prayer made in C.A. No. 79/2015, as cited above, confirms the opposite. If the Appellant has any grievance about her removal as a nominee director or the non-adherence to the AoA and provisions of the Act, she has the right to take recourse to other legal remedies, if any, in accordance with law.

(iv) APPELLANT'S SHAREHOLDING STANDS CONCLUSIVELY TRANSFERRED

13. Appellant has also contended that the company petition raises issues qua her shareholding of 50,000 equity shares in Respondent No. 3 and thus, her presence is necessary. She alleges that under undue pressure and coercion from Ms. Usha Jain, she had entered into a Settlement Agreement and executed Transfer Deeds dated 11th June, 2014 and 20th July, 2014, to transfer her shareholding of 50,000 shares in favour of Ms. Usha Jain.

14. Appellant's shareholding was minuscule to begin with and had no bearing on her appointment. Nonetheless, the issue of shareholding is no longer relevant as Appellant's shares have been transferred to DKJ Group. When Respondent No. 3 failed to register Ms. Usha Jain as the owner of the shares in place of the Appellant, Ms. Usha Jain filed C.P. No. 36/59/2014 against Respondent No. 3 and the Appellant. This petition was decided by an order dated 31st March 2016, as follows:

"The petitioner, Mrs. Usha Jain and Respondent No.2 - Ms. Priya Jain are present in person. The Petitioner has handed over Pay Order No. 055649 dated 16.3.2016 for Rs. 501acs to R2 i.e. Ms. Priya Jain.

2. R2 filed CA 38/C-11/2016 to dispose of this CP praying this Bench to record payment of Rs. 50lacs by the Petitioner to R2 vide Pay Order No. 055649 dated 16.03.2016 drawn on Canara Bank, Okhla, New Delhi before this Bench in furtherance of the agreement dated 15th March, 2016 and thereafter reply/objections dated 30.04.2015 filed by R2 for transfer of 50,000 equity shares be dismissed as not pressed and for further direction to R1 company to transfer 50,000 equity shares of R2 issued vide Certificate No. 9 bearing Distinctive No. 62,10,001 to 62,60,000 in the name of Mrs. Usha Jain i.e. the Petitioner, and also for a direction that Mrs. Usha Jain (the petitioner) and Ms Priya Jain, (R2) shall be bound by all the terms and conditions mentioned in the Agreement dated 15th March, 2016.

3. The counsel appearing on behalf of R1 company i.e. Eden Park Hotels Pvt. Ltd has raised no objection for allowing this application.

4. In pursuance thereof, this application is allowed disposing of the Company Petition by recording the payment of Rs.50Iacs by the Petitioner to R2 vide Pay Order No. 055649 dated 16.03.2016 drawn on Canara Bank. Okhla, New Delhi and also directing R1 company to transfer 50,000 equity shares of R2 issued vide Certificate No. 9 bearing Distinctive No. 62,10,001 to 62,60,000 in the name of Mrs. Usha Jain i.e. the Petitioner.

5. This Bench further directs that Mrs. Usha Jain, (the petitione and Ms Priya Jain (R2), shall be bound by all the terms and conditions mentioned in the Agreement dated 15th March, 2016.

6. The above Agreement dated 15.03.2016 is hereby made as part of this order.

3. Accordingly, this Company Application is hereby allowed, disposing of CP 36/59/2014."

15. Since Appellant has transferred her entire shareholding in Respondent No. 3 to Ms. Usha Jain, her plea premised on the basis of shareholding is of no consequence.

CONCLUSION

16. For the foregoing reasons, it is clear that the Appellant does not enjoy the support of DKJ Group. Appellant's shareholding in Respondent No. 3 stands transferred which underscores DKJ Group's right to make decisions which are in their best interests. There is no valid cause to implead the Appellant in a dispute that involves DKJ Group's pursuit to defend their representation rights in Respondent No. 3.

17. Dismissed, along with other pending applications.