

(2020) 08 GUJ CK 0209

In the Gujarat High Court

Case No : R/Special Civil Application No. 9464 Of 2020

Siddharth Bhandari

APPELLANT

Vs

National Company Law Tribunal

RESPONDENT

Date of Decision : 17-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 12, 226, 227
Companies Act, 2013 — Section 422

Citation : (2020) 08 GUJ CK 0209

Hon'ble Judges : G.R.Udhwani, J

Bench : Single Bench

Advocate : Tushar Hemani, Siddharth R Kheskani, Saurabh Soparkar, Jaimin Dave, Navin Pahwa, Ravi Pahwa

Final Decision : Dismissed

Judgement

G.R. Udhwani, J

Following prayers are sought in this petition:

â??7(A) direct the Respondent No. 1- National Company Law Tribunal to conclude all the matters of Respondent No.2 being Company Petition No.

93 of 2018, Company Petition No. 38 of 2019 and Company Petition No. 89 of 2019 along with all IA's filed therein which are pending before the

National Company Law Tribunal within 3 months and till that time the agenda No.4,5 and 6 of the AGM to be held on 17/08/2020 be stayed and/or not

given effect to;

(AA) Issue an appropriate writ, order or direction to suspend the agenda nos. 4, 5 and 6 of the Annual General Meeting dated 17/08/2020 of the

Respondent No.2;

(B) During the pendency and final disposal of this petition

i) Stay the re-appointment of Respondent No.3 as the Managing Director of Respondent No.1 and also stay the appointment of the Respondent No.4

as the Director and Whole Time Director of the Respondent No.1;

(C) Award cost of this petition;

(D) grant such other and further reliefs as may be deemed just and expedient.â??

On consideration of the rival submissions, it appears that petitioner has made few grievances in Company Petition No. 93 of 2018, Company Petition

No. 38 of 2019, Interlocutory Application No. 499 of 2019 in Company Petition No. 38 of 2019, Interlocutory Application No. 84 of 2020 in Company

Petition No. 38 of 2019 and Company Petition No. 89 of 2019; all pending with the National Company Law Tribunal (for short â??NCLTâ?). The

grievance is rested on the qualification/disqualification of some of the independent Board of Directors and one or more agenda scheduled on

17.08.2020 I.e today. It is stated that the annual general meeting is concluded by now.

The petitioner has also made the grievance as to misappropriation of funds and other matters in the company petitions/applications above-stated.

It is submitted by the learned counsel Shri Tushar Hemani for the petitioner that this petition in substance has been instituted against the National

Company Law Tribunal who has not been hearing the cases; the advantage of which is being received by the opponents and illegalities are being

multiplied by making illegal appointments and taking other illegal decisions. It has been submitted that the main relief the petitioner is pressing for is the

direction to the Tribunal to hear the cases expeditiously and other relief is only consequential and therefore notwithstanding the objection as to

maintainability of the petition for the respondent no.2 not being the State or other authority within the meaning of Article 12 of the Constitution of India,

the petition would be maintainable for other relief as well.

For the consideration of the main relief, it would be relevant to refer to Section 422 of the Companies Act, 2013 which reads thus:

â??422. Expeditious disposal by Tribunal and Appellate Tribunal.-(1) Every application or petition presented before the Tribunal and every appeal

filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the

Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

(2) Where any application or petition or appeal is not disposed of within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.â??

Evidently the Tribunal is required to make endeavor to expeditiously hear the petition or application within the specified period, in default whereof reasons are required to be recorded and the President/Chairperson of the Tribunal is authorized to extend the period referred to in sub-section (1) to the optimum of ninety days.

It is pointed out that on few occasions in one of the matters the petitioner had asked for an adjournment and on certain occasions the cases were

adjourned by consent and on few more occasions it was the Tribunal which was unable to take up the matter for one reason or the other. The

question therefore is whether in the above circumstances the case is made out for exercise of jurisdiction by this court under Article 226 of the

Constitution of India for expediting the cases pending with the NCLT. Without entering into the technicality as to whether such directions can be only

issued under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India as urged by learned senior counsel Mr.

Navin Pahwa, this court would address the question abovereferred.

Pertinently the legislature being aware of the hard pressed situation where the judicial manpower is disproportionately way far lower than the quantum

of the litigation has used the expression â??shall make an endeavourâ? in Section 422(supra) while binding the Tribunal to a time frame and thus the

Tribunal, and for that matter all judicial forums being hard pressed with the cases on its file can only make an endeavour for expeditious hearings with

the limited manpower and infrastructure. Under such situation, the petition can

be entertained with the aforesaid grievance only and only when the default on the part of the Tribunal is explicitly demonstrated by the cogent facts. In other words, to maintain the aforesaid relief the petitioner would be required to plead and prove the attributes pointing to the inaction on the part of the Tribunal to hear the case. No such explicit material is placed on record; in absence whereof, it will be inappropriate to issue the direction which may result into expediting the case at the cost of other cases requiring hearing expeditious than the case on hand. That apart, it appears that except in one case where the directions were sought from the National Company Law Appellate Tribunal for expeditious hearing of the case, the petitioner does not seem to have moved any application with the Tribunal itself for the purpose. Therefore there would be no question of mandamus in absence of representation to the Tribunal itself and the related failure of the Tribunal in discharging its duties.

Insofar as other relief is concerned, it is rightly argued by the respondents that respondent no.2 not being the State; not possessing any public attributes cannot be proceeded against in a writ petition under Article 226 of the Constitution of India and this court does not find the merit in the submission that substantial writ being only against the Tribunal, subsidiary relief would be maintainable against respondent no.2 under Article 226 of the Constitution of India. This court is of the opinion that even subsidiary relief would not be maintainable against the company not being the State or other authority within the meaning of Article 226 of the Constitution of India.

There is no rebuttal to the submission of the learned senior counsel shri Soparkar that infact the dispute is a family dispute. The Board of Directors comprises of petitioner's father, his uncle, nephew etc. and viewed from that angle it appears that the platform under Article 226 of the Constitution of India is sought to be used for settling the family scores. Therefore also this court would not exercise the extra ordinary jurisdiction for the purpose.

In view of the above it is unnecessary for this court to enter into the detailed merits of the case particularly when the cases are at large with the Tribunal.

For the foregoing reasons the petition fails and is dismissed.