

MENTIONING

NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
NEW DELHI

CP NO. 88(ND)/2016



CA NO.

PRESENT: CHIEF JUSTICE M. M. KUMAR  
PRESIDENT

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 09.06.2016

NAME OF THE COMPANY: **Smt. Smiti Golyan & Anr.**  
**Vs.**  
**M/s. Crocus Chattels Pvt. Ltd. & Ors.**

SECTION OF THE COMPANIES ACT: 241, 242 rw 244 of Companies Act 2013

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1	UKCHAUDHARY	Sr Adv	Petitioner - 1	
2	<del>ARUN KATTA</del>	<del>Sr Adv</del>	and Petitioner - 2	
3	RANJANA ROY GAWAI	Adv	Petitioner	
4	ABHAY PRATAP SINGH			
5	PUSHKAR TALWANI			
6	Himanshu Vij			
6	SARWAR RAZA	Adv	Respondents 1 to 9	
7	TAKRIM AHSAN KHAN			

P. T. O.

**ORDER**

Petition mentioned.

The Respondents have been served.

1. I have heard ld. counsel for the parties at some length.

Mr. U.K. Chaudhary, Learned Sr. counsel for the Petitioner has inter alia disputed two meetings. One of them is a meeting of the Board of Directors purported to have been held on 19.05.2016 and the other is EOGM dated 30.05.2016. Till 19.05.2016 the Board was comprised of 5 Directors. Out of 5 Directors, 3 belongs to Petitioner Group and 2 were from the Respondents group. It has been further been represented that Petitioner No.1 alongwith her husband Respondent No.10 and Petitioner No.2 company i.e. Nulon Global Limited jointly held over 80% of the shareholding and they have been in full control of Petitioner No.2 company and the subsidiary companies viz., Respondent No.1 company in each of the three petitions. It has further been pointed out that Respondent No.2, 3 & 4 filed CP No.130/2015 before the erstwhile Company Law Board, Kolkata Bench. After hearing, CLB passed an interim order on 26.05.2015 which reads as under:

" The CP No.130/2015 mentioned today. The petitioners Advocate submitted that the Company Petition was sent to all the Respondents by Speed Post on 16.5.2015 and the same was duly received by the Respondents on 19.5.2015. However, none appeared on behalf of the Respondents. Bench Officer is directed to issue notice to the Respondents to file reply within three weeks and rejoinder, if any, be filed within two weeks from the date of receipt of reply.

*In the meantime, status quo be maintained as to the shareholding and the composition of the Board of Directors till the next date of hearing.*

List the matter for hearing on 31.7.2015 at 2.30 PM."

AT



2. A perusal of the aforesaid order would show that status quo with regard to shareholding and the composition of the Board of Directors was directed to be maintained. The aforesaid order continues to operate till date.

3. Thereafter Petitioner No. 2 Nulon Global Limited moved an application for deleting the names of subsidiary companies from the array of parties. The request was readily accepted by the Petitioners namely Respondents 2, 3 & 4 herein. Accordingly the names of M/s. Colorado Chattles Pvt. Ltd, M/s. Gallus Chattles Pvt. Ltd. and M/s. Crocus Chattles Pvt. Ltd. were deleted from the array of parties because it was conceded by the respondents. The order was passed on 13.05.2016 which reads as under:

" In compliance with the directions of this Bench vide order dated 29.04.2016 the Petitioners Advocate has submitted on 06.05.2016, their written consent to the deletion of the names of Respondent Nos. 4, 5 & 6 from the array of the parties/respondents in CP No. 130/2015, as sought for in CA No. 1122/2015.

2. In the matter of CA No.1122/2015, the applicants have sought for deletion of the names of Respondent Nos. 4, 5 & 6 from the array of the parties/Respondents in CP No. 130/2015. The respondent Nos, 4, 5 & 6 are M/s. Colorado Chattles Pvt. Ltd, M/s. Gallus Chattles Pvt. Ltd. and M/s. Crocus Chattles Pvt. Ltd. respectively. Such deletion of names has been sought for mainly on the ground that there are no allegations against the Respondent Nos. 4, 5 & 6 who are the subsidiaries of R-1 company and are different entities.

3. Since the Petitioners have conceded to the prayer of the instant Company Application or deletion of the names of R-4, R-5 & R-6 from the instant proceeding, I do hereby allow to delete the names of the parties/Respondent Nos. 4, 5 & 6 from the array of the parties in the present Company Petition no.130/2015.

4. A No.1122/2016 is disposed of accordingly.

5. The Petitioners Advocate is directed to file with this Bench amended Memo of Parties in the present proceedings within two weeks and serve a copy of the same upon the Advocate representing R-1 to R-3 and file proof of such service with this Bench.

6. No order as to costs."

CP

4. It is appropriate to mention that in CP No.130/2015 filed by Respondent No.2, 3 & 4 the shareholding pattern of the petitioners and respondents is reflected in para 6.2 and the same reads as under:

Sl. No.	Name & Address	No. of shares Held:	% of Holding
1.	M.P. Golyan, 34, Western Avenue, Sainik Farm (Earlier known as 171-A, Sainik Farm), New Delhi-110 062.	2000	0.803
2.	K.K. Golyan, 34, Western Avenue, Sainik Farm (Earlier known as 171-A, Sainik Farm), New Delhi -110 062.	8000	3.21
3.	S.D.Golyan, 34, Western Avenue, Sainik Farm (Earlier known as 171-A, Sainik Farm), New Delhi -110 062.	44020	17.68
4.	Smiti Golyan, 34, Western Avenue, Sainik Farm (Earlier known as 171-A, Sainik Farm), New Delhi-110 062.	194080	77.94
5.	Parul Golyan, 34, Western Avenue, Sainik Farm (Earlier known as 171-A, Sainik Farm), New Delhi-110 062.	100	0.040
6.	Bhawani Golyan, 34, Western Avenue, Sainik Farm (Earlier known as 171-A, Sainik Farm), New Delhi -110 062.	100	0.040
7.	Luxmi Jhunjhunwala, 34, Western Avenue, Sainik Farm (Earlier known as 171-A, Sainik Farm), New Delhi -110 062.	100	0.040
8.	Nirmala Poddar, Vishwa Mehal, C-Road, Church Gate, Mumbai.	100	0.040
9.	Shruti Poddar, Vishwa Mehal, C-Road, Church Gate, Mumbai.	100	0.040
10.	Avantika Poddar, Vishwa Mehal, C-Road, Church Gate, Mumbai.	100	0.040
11.	Tulika Jhunjhunwala, 85, Nepen Sea Road, 1201, Nepen House, Mumbai.	100	0.040
12.	Vedika Jhunjhunwala, 85, Nepen Sea Road, Nepen House, Mumbai.	100	0.040
13.	Kanika Jhunjhunwala, 85, Nepen Sea road, 1201, Nepen House, Mumbai.	100	0.040
	<b>TOTAL</b>	<b>249,000</b>	<b>100</b>



5. A perusal of the aforesaid table would show that Petitioner No.1 holds 77.94% of the share and the claim in the present petition is that Petitioners No. 1 and 2 hold more than 80% of the shareholding in Respondent No.1 company in each of the petition.

6. It is also pertinent to notice that the shareholding given in the aforesaid table is described as illegal transfer by the petitioner. However, on account of status quo order passed by the C.L.B. the position has to be accepted that the petitioners hold more than 80% of the shareholding. It is in the aforesaid context that learned counsel for the petitioners has ruled out the possibility of holding a meeting on 19.05.2016 without petitioners participation because they would never consent to passing of any such resolution. It has been disputed by arguing that no such meeting has in fact taken place.

7. It has also been pointed out that on 13.05.2016 names of three Directors belonging to petitioners' group were removed illegally and in the meeting held on 19.05.2016 six additional directors were appointed belonging to respondent group. It has been represented that the petitioner holds more than 80% of the shareholding and there was no possibility for them to ever agree to give control of the Board to respondents. The Petitioner came to know about the aforesaid meeting when the Bank cellphone alert and email was sent to the Petitioner on 02.06.2016 intimating that a new cheque book has been issued.

8 Therefore it has been argued that no such meeting has ever taken place. As a matter of fact, no notice of the meeting was ever issued and Form DIR-12 has been uploaded on the website of ROC illegally. Moreover there was

hardly any time for issuing notice u/s 173(3) after the names of subsidiary companies were deleted in CP. 130/2015 on 13.05.2016. A reference has been made to s.173 to argue that one week notice was required whereas after 13.05.2016 meeting is admittedly held on 19.05.2016. Likewise for the EOGM purported to have been held on 30.05.2016 no notice of 21 days as contemplated u/s. 101 was issued and the meeting was held illegally which removed 3 Directors namely, Petitioner No.1, her husband Respondent No.10 and another one their nominee Director Respondent No.11. In that resolution the Registered Office was also changed.

9. Mr. Chaudhary has placed reliance on para 16 of the judgment of the Supreme Court rendered in the case of Dorab Cawasji Warden v. Coomi Sorab Warden (1990)2 SCC 117 and argued that mandatory injunction in the facts and circumstances would serve the interests of justice.

10. On the contrary Mr. Sarwar Raza, Ld. counsel for the Respondent has argued that the Petitioner had held only 33% share-holding in Petitioner No.2 company. According to the ld. counsel this is challenged by the Respondent in CP No.130/2015 because the transfer has been illegally made by raising their shareholding to 77% or above. Thus it is a disputed fact before the Kolkata Bench of the CLB. It has also been represented that proper notices of the meeting were given and all the statutory provisions have been religiously followed. However, no document has been shown as on date to indicate the issuance of notice, their receipts and the statutory compliances u/s. 173(3) and section 101 of the Companies Act 2013.


11. It is thus evident that the respondents 2, 3 & 4 have themselves filed CP No.130/2015 and status quo in respect of share holding and the



composition of Board of Directors was ordered to be maintained on 26.05.2015. However an application for deleting the respective names of Respondent No.1 company in each of the three petitions was filed by the Petitioner and their names were deleted on 13.05.2016 on the concession of Respondent No.1. Thereafter, in a suspicious manner a meeting is purported to be held on 13.05.2016 and 19.05.2016 removing 3 Directors of the petitioner's group. Such an action is prima facie contravenes the status quo order passed by Calcutta Bench of the CLB. Therefore the interest of justice would be served by staying the effect of resolution passed on 19.05.2016 and on 30.05.2016. In other words, the position before 19.05.2016 would continue to prevail till the next date of hearing.

12. Mr. Sarwar Raza, ld. counsel for the Respondent seeks two weeks time to file reply. Let the reply be filed within two weeks with a copy in advance to the counsel for the petitioner. Rejoinder, if any, be filed within two weeks thereafter with a copy in advance to the counsel opposite.

List on 18.07.2016 at 10.30 AM. A copy of this order be placed on the file of each of the Company Petition.

  
[CHIEF JUSTICE M.M. KUMAR]  
PRESIDENT

Date: 09.06.2016  
[ravi]