

NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
NEW DELHI

CP NO. 79(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 03.06.2016

NAME OF THE COMPANY: **Raffles Education investment (India) Pte Ltd.**

**Vs.**

**M/s. Educomp-Raffles Higher Education Ltd. & Ors.**

SECTION OF THE COMPANIES ACT: 397, 398 rw 402 & 403 of Companies Act 1956.

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Mr. U. K. Chaudhary,	Sr. Adv.	Petitioner	
2.	Mr. Abhinav Vasishth,	Sr. Adv.		
3.	Mr. Arun Kathpalia,	Sr. Adv.		
4.	Mr. Prashant Mishra,	Adv.		
5.	Mr. Piyush Prasad,	Adv.		
6.	Ms. Jomol Joy,	Adv.		
7.	Mr. Himanshu Vij,	Adv.		

- 1) Mr. Suhail Dutt, Sr. Adv.
- 2) Mr. Niraj Kumar, Adv.
- 3) Mr. Achint Singh Gyan Adv.
- 4) Mr. Vikram Shah, Adv.
- 5) Mr. Gopal Jain, Sr. Adv.
- 6) Ms. Kriti Anandhi, Adv.

Dep. no. 2, 3

Dep. no. 4, 10



**ORDER**

On 26.05.2016 the instant petition was mentioned and keeping in view the contested facts it was considered necessary to seek reply of the respondents before considering the request for interim reliefs. Accordingly separate reply by Respondent Nos.2 & 3 on the one hand and Respondent Nos.4 & 10 on the other have been filed.

I have heard learned counsel for the parties at length.

Respondent No.1-company was incorporated on 6.6.2008 in pursuance of Master Joint Venture Agreement dated 16.5.2008 executed between the parent companies of Educomp and Raffles groups. Presently the petitioners are holding 58.18% whereas Respondent Nos.2 & 3 have 41.82% shareholding. The Petitioners has projected that a Share Purchase Agreement was executed on 12.3.2015 wherein Respondent Nos.2 & 3 have agreed to sell their entire shareholding in Respondent No.1-company which they later reneged.

It is the allegations of the petitioner that Respondent Nos.2 & 9 have been conducting the affairs of the company in a manner which are oppressive and detrimental to the interest of the Petitioner as well as Respondent No.1-company. There is colossal mismanagement committed by the respondents in conspiracy with their agents. The principal issue raised is that there is no functional Board of Directors after October 2015 till date as only one director namely Mr. Santanu Prakash-Respondent No.4 survives whereas according to Article 97(iii)(a) of Articles of Association Educomp –Raffles-Respondent No.1-company both the petitioners and respondents have the right to appoint two directors as long as they have 50% of shareholding each.

According to Mr. U. K. Chaudhary learned senior counsel the shareholding of the petitioner is more than 50% being 58.18% and therefore they are entitled to nominate more than two directors. It has further been pointed out that under Article



98 the Board is empowered to appoint any person as a director as an addition to the Board, but the total number of directors shall not exceed the maximum number fixed by the Article or affect the rights of both the group or either of them to equal representation and also their respective interest.

Mr. Chaudhary has vehemently argued that apart from many other acts of mismanagement and oppression two purported Board meetings held on 27.5.2015 and 5.9.2015 are fabricated and fake. According to learned counsel on 12.3.2015 there were four directors namely Mr. Shantanu Prakash – respondent No. 4 appointed on 6.6.2008; Mr. Harpreet Singh-Respondent No.7 appointed on 23.9.2009; Ms Doris Chung Gim Lian appointed as additional director on 31.10.2014 and Ms Kah Chuan Kenneth Ho appointed as Additional Director on 31.10.2014. The last two directors were the nominees of the petitioner whereas respondent Nos. 4 & 7 were nominated by Respondent No. 2 & 3. Thereafter Mr. Harpreet Singh resigned on 27.5.2015 and to replace him Mr. Ashish Mittal –Respondent No. 10 was appointed on the Board of Directors as nominee of Respondent Nos.2 & 3 as Additional Directors. However as on date Respondent No.4 is the only director on the Board of Respondent No.1-company because appointment of Ms Doris Chung Gim Lian, Ms Kah Chuan Kenneth Ho and Mr. Ashish Mittal as Additional directors on the Board has not been formally confirmed in the AGM of Respondent No.1-company before 30.9.2015. The practice for holding Board Meeting of this company is that the business is informally transacted by exchange of emails/other communications on account of different locations of the parties and the minutes are drawn up to reflect the agreed position.

Mr. Chaudhary maintained that taking advantage of aforesaid the respondents have started fudging the records. Learned counsel has referred to email dated 25.5.2015 sent by Mr. Harpreet Singh-Respondent No.7 which is addressed to several people within the Raffles-Educom Organization stating that it was his last day of working with Educomp and on 2.6.2015 Mr. Manoj Jasoria, the Corporate Secretary addressed an email to directors of the company and respondent No.10 Mr. Ashish Mittal intimating them that Mr. Harpreet Singh director of the company has tendered his resignation as director of the company. He asked for approval for



completing the necessary formalities required to be complied with by reporting to ROC. However on 2.6.2015 at 4.32 PM Mr. Ashish Mittal-respondent No.10 sent an email that Mr. Harpreet Singh did not resign and status quo will be maintained till 31.07.2015. Then Mr. Manoj Jaosial sought clarification from Mr. Ashish Mittal and referred to the verbal instructions received from Mr. Harpreet Singh to complete the necessary formalities relating to his resignation from both the companies including Respondent No.1-company. On 6.6.2015 Corporate Secretary Mr. Jasoria sent another letter to Board Members of the company apart from other and respondent No.10 Mr. Mittal stating that the company has received a mail from Educom containing; (1) signed resignation letter of Mr. Harpreet Singh who has resigned as director from respondent No.1 company w.e.f. 27.5.2015;(2) signed consent letter from Mr. Ashish Mittal as replacement of Mr. Harpreet Singh on Respondent No.1 company. It was then requested to the Board to take note of the same and accord approval for completing necessary formalities. Likewise on 18.6.2015 Mr. Jasoria again wrote to the Board members reminding them that their approval was awaited and requested them to accord approval for proceeding with the further course. On 19.6.2015 Mr. Shantanu-Respondent No. 4 sent an email to Mr. Jasoria that email of 18.6.2015 is approved. These emails have been placed on record as Annexure P-15 (colly). A reference has also been made to the email of 5.6.2016 sent by Mr. Yogesh Saluja, Company Secretary of Educomp Solutions which was sent to Mr. Jasoria with a copy to Mr. Ashish Mittal-Respondent No.10 which is in the same terms as the email dated 5.6.2015 (annexure P.16). The meeting of Board is purported to have held on 27.5.2015 where the resignation of Mr. Harpreet Singh is shown to have been accepted and Mr. Ashish Mittal appears to have been appointed as Additional Director (Annexure P-17).

According to Mr. Chaudhary, it is thus clear that the resignation of Mr. Harpreet Singh and consequential replacement by Mr. Ashish Mittal was the subject matter of discussion till 19.6.2015 and it is only on 19.6.2015 when Mr. Shantanu Prakash- respondent No.4 gave his clearance. According to Mr. Chaudhary the documents have been anti dated at the behest of Respondent No. 1&2 by showing the resignation of Mr. Harpreet Singh and nomination of Mr. Ashish Mittal as



Additional Director on 27.5.2015. Form DIR 12 relating to appointment of Mr. Ashish Mittal-Respondent No.10 as additional director has been signed by Ms Doris petitioner's nominee director in good faith

Mr. Chaudhary has then argued that meeting dated 30.9.2015 is another example of fabrication. A copy of the draft minutes of the purported Board meeting held on 5.9.2015 has been placed on record. (annexure P-18). Similar evidence in respect of Mr. Ashish Mittal has been reflected in the mail sent by Mr. Jasoria on 27.10.2015. The bogey of the meeting held 05.09.2016 has also been raised by arguing that these are fabricated record. According to the learned counsel the petition is a counter blast to the complaint filed by Mr. Ashish Mittal against Mr. Doris before MCA exposing her acts of forgery. Mr. Chaudhary has argued that the AGM which was purported to be held on 30.9.2015 for approval of accounts could not be possible until and unless notice of the agenda in accordance with the provisions of the Act was given. The petitioner's nominee Ms. Doris has been subjected to coercion by respondent No.10 who has filed a complaint against her.

Mr. Suhail Dutt learned senior counsel for Respondent Nos. 2 & 3 and Mr. Gopal Jain learned counsel for respondent Nos. 4 & 10 have vehemently argued that the affairs of the company are conducted by the petitioner and the instant petition is not maintainable as no allegation of oppression/mismanagement could be raised against respondents. According to learned counsel petitioners and their nominee are engaged in fabrication and fudging the records. In that regard my attention was invited to Annexure P-17 at page 477 to argue that Ms Doris was the Chairperson of the meeting and these minutes speak about everything. Learned counsel then referred to annexure P.21 and argued that Ms. Doris has accepted Mr. Ashish Mittal as director as on 24.10.2015. In nutshell the respondents have levelled counter allegations of fabrication and mismanagement against the petitioners.

Be that as it may. One thing which is evident from the pleadings is that as on today there is a deadlock and the interests of the company (respondent No.1) are at stake. It is also a fact that no Board of Directors is functioning. The other directors like Ms Doris Chung Gim Lian and Ms Kah Chuan Kenneth Ho or Mr. Ashish Mittal have been the additional directors and there is a dispute in respect of their



continuation because one version is that they could not be confirmed in the Board Meeting which was required to be held in September 2015. According to Share Purchase agreement it is a part obligation of the petitioner and their sole responsibility to infuse fund in Respondent No.1-Company. The petitioner has pointed out that various institutions of Engineering, MBA, BBA, designing course have been adversely affected on account of non-functioning of Respondent No.1. Therefore in order to make respondent No.1-company functional a Board of directors is necessary. Therefore I deem it appropriate to pass the following interim orders by invoking the powers under section 241(g) & (h) read with section 242 of 2013 Act:-

1. The petitioner shall nominate two directors on the Board of Directors of Respondent No.1-company but shall not name Ms Doris Chung Gim Lian. Likewise Respondent Nos.2 & 3 shall nominate one more director in addition to Mr. Shantanu Prakash-Respondent No.4 but they shall not nominate Mr. Ashish Mittal-Respondent No.10. Ms Doris Chung Gim Lian (petitioner's nominee) and Mr. Ashish Mittal (Respondents' nominee) have been excluded because for the time being there is some controversy about both of them either raised in the petition or before the Ministry of Corporate Affairs. Their temporary exclusion shall not construe to their prejudice because this court aims to achieve peaceful conduct of the affairs of Respondent No.1-company. The needful shall be done within two weeks from today and thereafter the Board Meeting may be held, if necessary even in accordance with the provisions of section 173(2) of the 2013 Act read with Rule 3 of Companies (Meetings of Board and its Powers) Rule 2014
2. It is further directed that the Board meeting shall be chaired and initiated by the nominee of the petitioner as they have 58.18% shareholding and they have also undertaken complete responsibility of funding Respondent No.1-company as is clear from the Share Purchase Agreement. According to clause 3.1.2 the funding of the operations of Respondent No.1-company shall be exclusive responsibility of the purchaser i.e. petitioners.
3. The aforesaid directions shall operate till the next date of hearing.

Let the written statement by other Respondents be filed within four weeks with a copy in advance to the counsel opposite. Rejoinder to all the replies be filed within four weeks thereafter with a copy in advance to the counsel opposite.

List for arguments on 8.8.2016 at 10.30 am.

Sd/-

(CHIEF JUSTICE M.M. KUMAR)  
PRESIDENT

Dated: 10/06/2016  
(Vidya)