

IMPRACTICABILITY FOR HOLDING THE GENERAL MEETINGS OF THE COMPANY

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This article discusses the impracticability of holding a general meeting having two members only and where one member is unavailable. The CLB (Kolkata) had the opportunity to consider this question in the below mentioned case and it was held that in the interest of the company, only one person is competent to call an EGM and disposed off the petition accordingly.

1. Introduction

Recently, Company Law Board (CLB), Kolkata, had occasion to consider a question of impracticability of holding an extraordinary general meeting in a company having two members only and one of whom is not available, as his whereabouts are not known. The CLB has allowed the petition in the case of Ranjeet Kumar Mishra v. Chinnmatika Estates Private Limited and Another, CP No.949 (186)/KB of 2008 [2011] (CLB-Kolkata) and directed the Petitioner to call the extraordinary general meeting of the company with one member, who is competent to call the meeting in terms of Section 186 of the Companies Act, 1956 even though there is no requisite quorum. This is one of the significant orders of the CLB. The underlying principles and reasoning in disposing of the petition in the order have been analysed hereunder.

2. Brief Facts of the Case

The Petitioner Mr. Ranjeet Kumar Mishra is a 50 per cent shareholder and also a director of a company called "Chinnmatika Estates Private Limited", which was incorporated on 11th February, 2004, and another 50 per cent shareholder and director is one Mr. Dularchand Mukhiya. On 5th December, 2005, the shareholder and director Mr. Mukhiya resigned from the board of the company and Ms. Meera Jha was appointed as a director with effect from that date, who is a second Respondent in the case. The Petitioner alleged that the second Respondent failed to attend board meetings convened and as a consequence, the Petitioner adjourned the meetings for want of quorum. On 15th, July, 2008, the second Respondent appointed two of her relatives, viz. Mr. Kedar Jha and Mr. Prasoon Jha, as additional directors of the company by forging the signature of the Petitioner, which was never put to the notice of the Petitioner. Since the Petitioner being 50 per cent shareholder and also director of the company, he called for annual general meetings for financial years 2006 and 2007, after dispatch of notice to Mr. Mukhiya. The Petitioner came to know that Mr. Mukhiya left his place, the company found it difficult to convene any extraordinary general meeting for want of quorum which has become hindrance to proceed with the latest projects of the company. In view of this, the Petitioner filed a petition before CLB, Kolkata Bench, for calling an extraordinary general meeting of the company to hold and conduct the meeting, as it is impracticable to call a meeting in the deadlock created by the conspicuous absence of Mr.

Dularchand Mukhiya and for removal of additional directors fraudulently got appointed by the second Respondent. The second Respondent contended that the shares held by Mr. Mukhiya transferred in her name in the year 2005 itself and in view of the said transfer, Mr. Mukhiya resigned from the office of director of the company and the second Respondent has become the holder of 50 per cent equity share capital of the company and thereby the Petitioner is not entitled to any EGM, it cannot be said as impracticable to holding meetings, thereby the petition is not maintainable in the eyes of law, hence sought for dismissal of the petition.

3. Relevant Sections

Section 186 of the Companies Act, 1956: (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Company Law Board may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting :

(a) order a meeting of the company to be called, held and conducted in such manner as the Company Law Board thinks fit; and

(b) give such ancillary or consequential directions as the Company Law Board thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the company's articles.

Explanation - The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

4. Contentions of the Parties

The Petitioner stated in the rejoinder that there is no transfer of shares of Mr. Mukhiya to the second Respondent as mentioned by her. There was no notice for any Board Meetings having agenda of transfer of shares or any resolution to that effect in any board meetings of the company so far held.

The Petitioner categorically stated that the second Respondent fabricated the minutes by taking out the copy of the signature of the Petitioner by trick of technology and the second Respondent has been harassing the Petitioner by filing criminal cases one after another.

Since the deadlock subsisting in the company, the Petitioner prayed the CLB to pass order directing the call EGM so as to remove the deadlock hindering the progress and affairs of the company.

Against the arguments of Petitioner, the second Respondent stated that she is a 50percent shareholder of the company and the shareholding of Mr. Mukhiya was transferred in her name and he resigned from the office of Director of the company in pursuance of transfer. Mr. Mukhiya is no longer a shareholder of the company.

She further stated that the Petitioner has been acting prejudicial to the interest of the company by siphoning off the funds of the company and also changing the name and place of the office of the company without being put to notice. As the second Respondent being the shareholder, there is no impracticability to call the AGM and because Mr. Mukhiya being no more a director in the company, the petition is liable to be dismissed.

The second Respondent vehemently argued that the Petitioner is not entitled to invoke the relief under Section 186 of the Companies Act, 1956, as the Petitioner called an EGM on 22nd January, 2010 after filing this petition.

5. Decision and Directions of the CLB

On hearing rival contentions, the Bench called for annual returns and other details in relation to the company from ROC, Patna. ROC, Patna confirmed that the company had filed balance sheet on 31st March, 2006 and the annual return on 30th September, 2006 and also form No. 32 filed on 21st December, 2005 and 27th August, 2008 digitally signed by the second Respondent disclosing the appointment of Mr. Prasoon Kumar Jha and Mr. Kedar Jha as additional directors of the company.

The Bench of CLB Kolkata noticed that the company comprised of two members, the petitioner with 50 per cent shareholding and the said Mr. Mukhiya with 50 per cent shareholding. These shares were not found changed until 18th January, 2010 as per information of ROC, Patna. The second Respondent neither filed any share certificates in her name or the certificates of Mr. Mukhiya or at least transfer deed in her name, she cannot be considered as member of the company in the place of Mr. Mukhiya to have entitlement for attending as member in the EGM to be held. Form No. 32 filed on 21st December, 2005 discloses that Mr. Mukhiya resigned on 5th December, 2005 but no evidence was shown as Mr. Mukhiya transferred his shareholding to the second Respondent.

The Petitioner filed proof of issuing of notices to Mr. Mukhiya for calling AGM in the year 2007 and 2008. The second Respondent did not file any piece of paper disclosing the transfer of shareholding in her name and she remained absent attending Board Meetings despite she being put to notice.

There being only two shareholders, one is the Petitioner and other is Mr. Mukhiya. Since Mr. Mukhiya was continuously absent for the last two AGMs, it has become impracticable to hold any

EGM with requisite quorum. The Petitioner also published the notice of EGM in a newspaper as per the direction of the Bench of CLB, which was also filed before the Bench.

The second Respondent's contention was that the Petitioner is not entitled to invoke the relief under Section 186 of the Companies Act, 1956, as the Petitioner called an EGM on 22nd January, 2010 after filing this petition is not supported by law because the Petitioner issued that notice by paper publication on the order passed by this Bench on 16th December, 2009 and this notice was issued only after filing this petition.

There being only two members in the company. One being not available for holding the EGM and the second Respondent fraudulently appointed two of her men as directors without notice to the Petitioner.

In the larger interest of the company, the Petitioner is entitled for direction for calling EGM though quorum not being there and even one member is competent to call EGM, when the company is comprised of only two shareholders. Finally, the CLB Kolkata Bench allowed the petition directing the Petitioner to call, hold and conduct EGM of the company within four weeks.

6. Conclusion

The Company Law Board, Kolkata Bench allowed the petition directing the Petitioner to call, hold and conduct the EGM of the company under Section 186 of the Companies Act based on the findings that it has become impracticable to call and hold the meeting with necessary quorum as enunciated under Section 169. This direction is a significant and vital from the point of view of private companies and those companies with fewer number of shareholders.

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