

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5622 of 2016

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Krishna Nand Singh, son of Late Kartik Singh, resident of Sri Krishna Nagar, 1st Floor, Road No. 23, Plot No.176, Budha Colony, Patna, Chairman-cum-Chief Executive Officer of IDIO Construction & Industries (I) Ltd. Company incorporated under the Companies Act, 1956 having registered office at H/O Ram Swaroop Prasad Singh, Ambika Offset Printers, Braham Sthan, Dariyapur Gola, Patna

.... Petitioner/s

Versus

The Registrar of the Company, Bihar & Jharkhand, 4th Floor, Maurya Lok, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lakshmi Kant Sharma

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 21-04-2016

Heard Mr. Ramakant Sharma for the petitioner.

The grievance raised in this writ application is against the minutes of the Registrar of the Company dated 08.04.2016.

During the pendency of this application the Registrar of the Company passed an order vide minutes dated 08.04.2016 which has also been impugned by filing I.A. No. 3146 of 2016. The Registrar of the Company in the order/minutes dated 08.04.2016 observed as under:-

“Further, since the matter is pending before the Company Law Board and before the Hon’ble High Court, Patna as stated by the complainant, present issue matter cannot be proceeded by this Officer. The complainant as well as the Company are hereby directed to take up the matter with the Company Law Board.”



Mr. Sharma, the Sr. Counsel, appearing in support of the application, draws attention of the Court to the order dated 05.04.2016 passed in C.A. No.190 of 2016 in C.P. No. 145 of 2013 by the Company Law Board, Kolkata Bench in order to submit that Extraordinary General Meeting held on 07.09.2015 was declared null and void. In the aforesaid meeting, it is stated, the petitioner was removed from the office-bearer of the Company called IDIO Construction & Industries (1) Ltd. For better appreciation, operative part of the order dated 5th April, 2016 passed by the Company Law Board is extracted herienbelow:-

“Having considered the Company Application and the submissions/ Arguments of he Respondent/Applicants Advocate and the Petitioners/Non-Applicants Advocate, it is observed that the instant Company Application has been filed on 14.03.2016 and mentioned on 17.03.2016, whereas the cause of action as to the convening and holding the Extra-ordinary General Meeting (EOGM) emerged on 07.09.2015 when the Respondent no.2 received notice of the aforesaid EOGM. Further, in the present Company Application, here is no explanation or clarification as to why the requisite Company Application was not filed before holding the EOGM on 21.09.2015. Therefore, to decide the legality and validity of the said EOGM, it is imperative that the detailed trial be carried out. However, in view of the restraint Order as to the constitution of the Board of Directors vide Order dated 11.07.2013, the resolutions

with regard to items No.3 and 4 relating to removal of the present Board of Directors and appointment of new Directors and Chairman-cum-Managing Director are hereby stayed till the disposal of the instant Company Application.”

It appears that the matter is pending consideration before the Company Law Board. In these circumstances, the aforesaid order/minutes was passed by the respondent Registrar of the Company which has been impugned. Primarily, two reasons have been assigned by the respondent Registrar of the Company for not proceeding further in the matter. One reason is that the matter is sub judice in this Court at the instance of the petitioner which pertains to the pendency of the present writ application. Indisputably, another matter at the instance of the petitioner is pending consideration before the Company Law Board in which the aforesaid order was passed on 05.04.2016.

Mr. Sharma submits that the interim order having been passed by the Company Law Board, the respondent Registrar of the Company ought to have proceeded in the matter and permitted the petitioner to function as the office-bearer of the petitioner-Company. In my view, if the order of the Company Law Board is not being complied with by the respondent Registrar of the Company, it is open to the petitioner to approach the Company Law Board for appropriate direction/order. Pendency of this writ application is one of the grounds cited in the impugned order

passed by the respondent Registrar of the Company. This Court, in such circumstances, would dispose of the application permitting the petitioner to approach the respondent Registrar of the Company and impress upon him that the order passed by the Company Law Board, in the facts and circumstances of the case, is required to be carried out by him and/or approach the Company Law Board for appropriate direction in the matter.

The writ application is accordingly disposed of.

(Kishore Kumar Mandal, J)

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