

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2016

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

Company Appeal Nos.3 and 4 of 2015

and M.P.Nos.1 and 1 of 2015

1. I Gen Power System Private Limited,
Old No.13, New No.18 B, Mettu Street,
Link Road, Maduvakkam, Guindy,
Chennai - 600 032.
 - 2.G.Lakshminarasiman,
E-6, 6th Floor, Shanthi Gulmohar,
No.147-149, R.K.Mutt Road,
R.A. Puram, Chennai - 600 028.
 - 3.V.Bharathi,
E-6, 6th Floor, Shanthi Gulmohar,
No.147-149, R.K.Mutt Road,
R.A. Puram, Chennai - 600 028. .. Appellants in
Comp. Appeal No.3/3015
 - M.B.Srinivasan, Parnter,
M/s.Sri & CO., Chartered Accountants,
"Dhanalakshmi"
Flat No. F-2, Sindur Cascade,
No.2, Krishna Street, North Usman Road,
T.Nagar, Chennai - 600 017. .. Appellant in
Comp. Appeal No.4/2015
- v.
- A.R.Rajasekar,
C-3, Sunrise Avenue,
First Cross Street,
Neelankarai, Chennai - 600 041. .. Respondent in
both Comp. Appeals

Company Appeals filed under Section 10(F) of the Companies Act, 1956, to set aside the order of the Company Law Board dated 23.02.2015 passed in C.A.Nos.1 and 2 of 2015 in Company Petition No.29 of 2013.

For Appellants :Mr.K.Ramasamy
For Respondents:Mr.P.H.Aravind Pandian, Senior Counsel
for M/s.harishankar Mani

JUDGMENT

1. These are two appeals filed against a common order of the Company Law Board (as it then was) dated 23.02.2015. By virtue of this order, the Company Law Board dismissed the Company Applications being : C.A.Nos.1 and 2 of 2015 filed by the appellants before me.

2. The Company Law Board's order shows that not one, but several opportunities had been given to the appellants to file their counter affidavits. These opportunities were given by the Company Law Board (CLB) on 13.05.2013, 05.08.2013, 24.10.2013, 11.03.2014, 12.08.2014, 08.10.2014, 11.11.2014 and 18.12.2014.

3. This aspect of the matter is not disputed by Mr.Ramasamy, who appears for the appellants. Mr.Ramasamy, thus, concedes that the appellants have been grossly remiss in defending the proceedings filed before the CLB by the respondent herein.

3.1. It is the learned counsel submission that one last opportunity be given to correct the error. Mr.Ramasamy, also says that the counter affidavit is ready and that it shall be filed with the Company Law Board (now National Company Law Tribunal [NCLT]), tomorrow i.e., on 28.09.2016, which is the date fixed for hearing the Company Petition.

4. I have put this proposition to Mr.P.H.Aravind Pandian, learned Senior Counsel appearing for the respondent in the captioned appeals. Mr.Pandian says that any indulgence granted by this Court should be made subject to costs. Mr.Pandian further submits that he would rather have a decision on merits than have his client be put in a situation, where the concerned forum has to proceed without the defence of the other side being placed on record.

5. Having regard to the overall circumstances, I tend to agree with the submissions made before me by Mr.Pandian. Accordingly, the impugned order is set aside, subject to the appellants filing their counter affidavits with the concerned forum i.e., NCLT, by tomorrow. This, leeway is given to the appellants subject to payment of cost of Rs.20,000/- (Rupees Twenty Thousand only) to the respondent. The said cost will be paid within one week from today.

6. In case, appellants fail to comply with any or both conditions put by the Court, that is, either in filing the counter affidavit before NCLT and/or the order for payment of costs, the concerned forum will proceed in the matter based on the record as it obtains today.

7. These appeals are disposed of, in the aforesaid terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

The Chairman,
Company Law Board,
Chennai Bench, Chennai.

+1 cc to Mr.Harishankar,advocate,sr.55228

+2 cc's to M/s.K.ramasamy,advocate,sr.13210.

kji(co)
krd 28/9

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and M.P.Nos.1 and 1 of 2015

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