

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.S.A. Nos.259 and 260 of 2019
and CMP.Nos.21648 and 21650 of 2019
in OSA.No.259 of 2019
and CMP.Nos.21653 and 21654 of 2019
in OSA.No.260 of 2019

OSA.No.259 of 2019:-

- 1.Yogesh J Shah,
Vice-President, MJDMA & Past-Chairman, GJIE,
Proprietor of "Sheetal Diamonds"
36/2, Veerappan Street,
Swarnashree Complex,
2nd Floor, Shop NO.201,
Chennai - 600 079.
- 2.Rajesh Vummidi
Chairman, GJIE & Member, Executive Committee,
Representing "VBC Jewellers"
118, Nageswara Road,
T.Nagar, Chennai - 600 017.
- 3.T.M.Sreenivaasalu
Joint Treasurer, MJDMA
Proprietor of "T.Manickam Chetty & Son"
No.136/224, Govindappa Naicker Street,
Chennai - 600 001.
- 4.M.Jahufar
Proprietor of "Fareedha Jewellers"
212/1, Rohini Flats,
Anna Nagar West Extension,
Chennai - 600 101.

... Appellants

Versus

1.The Madras Jewellers & Diamond Merchants Association,
Having its registered Office at
10, Car Street, NSC Bose Road,
Chennai - 600 079.

2.Jayantilal I Challani President, MJDMA
10, Car Street, NSC Bose Road,
Chennai - 600 079.

3.MJF Ln S.Santhakumar
Honorary Secretary, MJDMA
10, Car Street, NSC Bose Road,
Chennai - 600 079.

4.Sri.Pravin M Mehta

5.Sri.N.Anantha Padmanaban

6.Sri Babu Emmanuel

4 to 6 are having office at
Madras Jewellers & Diamond Merchants Association,
No.2, Car Street,
N.S.C.Bose Road, Chennai - 600 079.

..... Respondents

OSA.No.260 of 2019:-

1.Vummidi Udayakumar
Founder & Past-Chairman GJIE & Past VP, MJDMA
86, Devaraj Mudali St,
Chennai - 600 003.

2.Yogesh J Shah,
Vice-President, MJDMA & Past-Chairman, GJIE,
36/2, Veerappan Street,
Swarnashree Complex,
2nd Floor, Shop NO.201,
Chennai - 600 079.

3.HLM.Sultan Mohideen
Vice-President MJDMA & Vice-Chairman, GJIE
30/57 TTK Road, Alwarpet,
Chennai - 600 018.

4.Rajesh Vummidi
Chairman, GJIE & Member, Executive Committee,
118, Nageswara Road,
T.Nagar, Chennai - 600 017.

5.S.Prasanna

6.T.M.Sreenivaasalu
Joint Treasurer, MJDMA
No.136/224, GovindappaNaicker Street,
Chennai - 600 001.

... Appellants

Versus

1.The Madras Jewellers & Diamond Merchants Association,
Having its registered Office at
10, Car Street, NSC Bose Road,
Chennai - 600 079.

2.Jayantilal I Challani President, MJDMA
10, Car Street, NSC Bose Road,
Chennai - 600 079.

3.MJF In S.Santhakumar
Honorary Secretary, MJDMA
10, Car Street, NSC Bose Road,
Chennai - 600 079.

... Respondents

PRAYER in OSA.Nos.259 and 260 of 2019: Original Side Appeal filed under Order 36 Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent to set aside the fair order and decretal dated 03.10.2019 passed in (i) Appln.No.7449 of 2019 in C.S.No.575 of 2019 (ii) Appln.No.7448 of 2019 in C.S.No.539 of 2019 respectively.

Appln.Nos.7448 & 7449 of 2019:

Application praying that this Hon'ble court may be pleased to reject the plaint in C.S.No.539 of 575 of 2019 under order VII Rule 11(d) of the code of Civil Procedure 1908.

a) for permanent injunction restraining the defendants from conducting "Gem and Jewelry India International Fair / exhibition" using the first defendant name.

b) to declare that the office post of President presently held by the second defendant in the executive committee of the first defendant as null and void even after the expiry of the period from the year 2014 to 2016 as invalid.

c) to declare that the office post of honorary secretary presently held by the third defendant in the executive committee of the first defendant as null and void even after the expiry of the period from the year 2014 to 2016 as invalid.

d) to appoint a retired judge of the High Court as an administrator to conduct elections with the respect to the executive committee of the first defendant association and submit a report before this Hon'ble Court.

e) and pass such other further orders that this Hon'ble Court deems fit as the facts and circumstances of the case.

(a) To declare the notice for extraordinary general body meeting dated 12.09.2019 posted on 14.09.2019 and served on the plaintiffs 1 to 3 only on 16.09.2019 and 17.09.2019 proposing to conduct elections on 09.10.2019 as null and void;

(b) permanent injunction restraining the defendants and their men or servant or any person acting on their behalf from in any way conducting elections in violation of the Articles of Association and the Provisions of Companies Act and the undertaking given by the defendants 1 to 3 dated 05.10.2015 in C.P.No.156 of 2015, in pursuance of the notice for extraordinary general body meeting dated 12.09.2019 posted on 14.09.2019 and served on the plaintiffs 1 to 3 only on 16.09.2019 and 17.09.2019 proposing to conduct elections on 09.10.2019 or on any other date.

For Appellants : Mr.V.Raghavachari
in both Appeals for Mr.M.Narayanasamy
in both the appeals

For Respondents: Mr.P.H.Arvind Pandiyan,
in both Appeals Additional Advocate General
Assisted by Mr.Pawan Jhabakh
Mr.Vikram Veerasamy

COMMON JUDGMENT

After some arguments, learned counsel on record for the respondents have filed a memo, on instructions from the respondents who are present in the court. The memo reads as follows:-

1. It is submitted that the Respondents undertake to concede to main prayer no. (c) in Company Petition No. 156 of 2015, now

T.C.P. 214 OF 2019 pending its disposal on other issues filed by the present Appellants without prejudice to the contentions of the Respondent in the present Appeals. It is submitted that the elections to the office of the Executive Committee alone can be conducted immediately under the guidance, supervision and directions of the National Company Law Tribunal, Chennai Bench.

2. It is submitted that the newly elected committee shall comply with all statutory requirements of the Companies Act 2013 and other relevant/applicable rules for adoption of the accounts from the Financial Year 2014-2015 to 2019-2020, appointment of statutory auditor or such other statutory compliance.

3. It is submitted that suitable directions may be issued to the National Company Law Tribunal, Chennai Bench for the appointment of a Retired High Court Judge who would be assisted by a Company Secretary to conduct the elections to the Executive Committee.

4. This memo is being filed by the Respondents in addition to the stand taken that section 430 of the Companies Act 2013 is applicable in the present appeals.

5. This memo may be taken on record and orders may be passed as deemed fit taking note of the above.

2. In view of this memo, we direct the National Company Law Tribunal to dispose of the prayer (c) in TCP.No.214 of 2019, which reads as follows:-

"c) that pending final orders in the present petition, an independent Company Secretary be appointed as Election Officer to conduct the Company's elections due by September 2015. "

with the following modification:

The National Company Law Tribunal is directed to appoint a retired Judge of this Court as an Election Officer to conduct the elections for electing the Executive Committee of the 1st respondent Company. The

Election Officer shall be assisted by a qualified Independent Company Secretary in the conduct of elections. Needless to point out that the election shall be conducted by convening a Extraordinary General Body Meeting of the first respondent as per its Articles of Association. This exercise shall be completed by the National Company Law Tribunal within a period of 30 days from the date of receipt of a copy of this order.

3. In view of the above directions, the elections that is scheduled to be held on 09.10.2019 will stand cancelled. We make it clear that this order is passed based on the memo filed by the learned counsel for the respondents and we are not expressing any opinion on the merits of the appeal.

4. The appeals will stand disposed of in terms of the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jv/dsa

1.The Sub Assistant Registrar,
Original Side Section, High Court, Madras.

2.The National Company Law Tribunal,
Chennai.

+2cc to Mr.M.Narayanaswamy, Advocate sr.85270
+2cc to Harishankar Mani, Advocate sr.85271

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nr 10/10/2019