

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.13387 of 2018

ORDER:

The petitioners Vanguru Narayana Reddy and Devandh Reddy Bomma respectively are A.9 and A.10 in C.C.No.22 of 2018 on the file of the Special Judge for Economic Offences, Nampally taken cognizance for the offences punishable u/ sec.439, 447, 448,449 and 452 of the Companies Act, 2013 r/ w Section 408 and 420 IPC. It is outcome of the private complaint of the 3 complainants viz: C.Chandrasekhar, B.P.Ramanna represented by General Power of Attorney Sri Chandrasekhar, and HMR Infra Projects Private Limited(for short, 'the Company) represented by its Director Chandrasekhar and the accused in total ten are viz: Madhukar Koganti-A.1, Vinay Kumar Koganti-A.2, Vanguru Nikhil Reddy-A.3, Venkateshwar Veeramachaneni-A.4, Balamurali Krishna Rangineni-A.5, Saivenkat Bonthu-A.6, Gengu Sandeep-A.7, Rajeswar Rao Bonthu-A.8, Vanguru Narayana Reddy-A.9 and Devanadh Reddy Bomma-A.10-(A.9 and A.10 are petitioners herein).

2. The averments of the private complaint, dt.8/ 11.01.2018 with reference to 22 documents filed that was taken cognizance from the 36 paragraphs with averments in nutshell show the complainants 1 and 2 are Promoters and shareholders of the Company and are subscribers of its Memorandum of Association along with A.1, which is a Private Limited Company under the Companies Act, 1956 with the Registrar of Companies, Andhra Pradesh, Hyderabad with Certificate of Incorporation dt.04.04.2007 and they along with A.1 are shareholders of the Company subscribed Rs.3,000/-, 3000/- and 4,000/- equity shares of Rs.10/- each at the time of incorporation of the company. The authorized capital of Rs.25 lakhs of the Company is divided into 2,50,000 equity shares of Rs.10/-each and the paid up capital of the Company is only one Lakh rupees which Company was started with the main objects as spelt out in the Memorandum of Association. The Company constructed various prestigious projects like "HMR Bommarillu" near Miyapur Cross Roads, "HMR Delight" at ECIL X Roads, Nagaram, "HMR Classic Ventures" at Women's Co-operative Society, Venkatagiri, Jubilee Hills and "HMR Pride" at Madinaguda and the entire execution of the afore stated projects was

done mainly by the Complainants by playing major roles, like looking after the day-to-day operations till the final handing over of the entire project, apart from playing important roles in acquiring the lands, designing the projects and getting all the required approvals, statutory permissions, registrations, dealing with the contractor, vendors, marketing the ventures etc. The Complainant No.1 was instrumental in managing the bank operations and mobilization of the required funds for the project development and their completion with their dedicated efforts to gain a good brand image and good will in the market such that the brand of "HMP" came to be known for quality development and constructions. A.1 was one of the Promoters/ Directors/ Shareholder was not involved in any of the day-to-day activities of the Company being a sleeping partner in the Company however, fully aware and acquainted with financial/revenue aspects of the Company and is also the signatory of the annual statements of the Company every year to the statutory authorities and as per Clause 19(a) of the Articles of Association, the Company should not have less than 2 Directors and not more than 12 Directors, including alternate, additional, technical and other kind of Directors. As per terms of the Articles of the Company, the Board vide its meetings held on 28-12-2011, 05-01-2012 and 22-03-2013 appointed K.Vinay Kumar, Smt.G.Suguna and G.Veerender Das by duly following the provisions of law and the total strength of the Board increased to six Directors. K.Vinay Kumar-A.2 is none other than the son of A.1, while Smt. G.Suguna is the sister of the Complainant No.1 and G.Veerender Das is a third party. The Company has only three (3) shareholders who subscribed to 10000 equity shares each @ Rs.10 equal to a paid up capital of one lakh rupees and the entire money required for the development of the above projects brought in or mobilized by the Complainants 1 & 2 and other Directors.

2-a. The complaint further shows the A. 1 and A.2 with the intention of defrauding the Complainants and take over the Company illegally and fraudulently and in complete contravention of the provisions of the Act, Companies Act 2013 (for short, 'the Act') appointed A.3 to 10 as Additional Directors of the Company in an alleged meeting said to have been held on 12-09-2016, pursuant to which the

number of Directors on the Board increased to 14, which is in contravention of clause 19 of the Memorandum of Articles and the purported notice for the Board Meeting to be held on 12-09-2016 was without date and the agenda of the meeting does not even whisper about any agenda for appointment of Additional Directors to the Board of the Company. In the said notice, there are no details of the persons proposed to be appointed as Additional Directors as required under section 161 of the Act, surprisingly, the Board Meeting was held at a at 10.30 am at 3rd floor of Plaza Hotel, Balayogi Paryatak Bhavan, Green lands Cross Road, Hyderabad-16, instead of the Registered Office of the Company. The A.2 issued another notice of Board Meeting on 12-09-2016 stating that Board of Directors would be held on 23-09-2016 at 10.30a.m. in the same place supra but the same shows either appointment of or the details of the meeting said to have been held on 12-09-2016 pursuant to the earlier undated notice of Board Meeting. A.2 again addressed a letter dated 15-09-2016 to all the Directors, which to the knowledge of the Complainants 1 and 2 is only six Directors, without mentioning the names and addresses of the Directors and without even informing that there were eight (8) Additional Directors appointed on 12-09-2016, and the notice stated that even though the notice of the Board meeting dated 12-09-2016 was issued, several of the Directors did not attend the Board Meeting and the Company did not comply with various provisions of the Act, and demanded the details of the various projects being executed by the Company and the said notice also listed other items and the manner in which the meeting of the Board held has been specified u/ sec.173 to 175 of the Act and Section 161 of the Act, categorically sets out the procedure to be followed in the appointment of Additional Directors but the A.1 and 2 totally violated these provisions and the A.2, who is not even a shareholder of the Company, issued a requisition to the Company calling for convening a Extraordinary General Meeting in contravention of the provisions of the Act and all actions of the A.1 and A.2 in issuing notices dated 12-09-2016 and 15-09-2016 are null and void being in utter violation provisions of the Act. It is with criminal intention of taking over the Company, the A.1 and A.2, in conspiracy with the A.3 to A.10, fabricated their appointments as the Additional Directors of the Company,

completely in contravention with the provisions of the Act. The A.2 issued another notice dated 26-10-2016 u/ sec. 173(3) of the Act to all the Directors informing that a Board meeting would be held on 03-11-2016 at 10.00 am once again at Hotel Plaza. The Complainants 1 and 2 and the other Directors vide letter dated 31-10-2016 taken serious objections from the manner in which the notices were addressed and the meetings were conducted and had also informed all the Directors that the meeting sought to be held on 03-11-2016 has to be cancelled and the fresh meeting of the Directors has to be held by following due procedure under law. the A.1 and A.2 sent a reply dated 08-11-2016 to the Complainant's letter dated 31-10-2016 using the Company's letter head with a different email id and a different layout, stating that the letter dated 31-10-2016 was received by them at 12.30pm much after the board meeting was concluded and for the first time the A.1 and A.2 raised allegations against the other four Directors of the Company, while taking the stand of the Company's affairs are being conducted as per law.

2-b. Aggrieved by the conduct of the accused in attempting to take over the management control of the Company, the Complainants filed a suit OS No.1525/ 2016 on the file of the Prl.Senior Civil Judge, Panga Reddy, seeking for injunction and the Court was initially pleased to grant ad interim injunction on 29-09-2016 restraining the newly appointed Directors not to interfere in the operations of the Company, however, the suit was returned for want of jurisdiction in the civil Court as the issues pertain to company law in the jurisdiction of the National Company Law Tribunal(for short, 'the NCLT'). In furtherance of the illegal acts of taking over the Company, the A.2 on 23-09-2016 made representation to the Company's operating account viz. Axis Bank, requesting to change the authorized signatory for operation of the bank account of the Company to that of A.1 and A.2 and on coming to know of the same, the complainants along with other Directors submitted a detailed letter dated 18-10-2016 requesting M/ S.Axis Bank not to act upon the letters of the A.1 and A.2 as they do not have any legal sanctity, and informing that the Court passed injunction on 29-09-2016 restraining

the newly appointed Directors not to interfere in the operations of the Company to allow the Complainants 1 and 2 with the earlier arrangement. The Complainants got issued a detailed notice to M/S Axis Bank on 31-10-2016 explaining the complete facts and circumstances and requested the Bank not to allow any further operations in the Company's account till further orders from the courts. Thereafter, on false representation from the Accused to the Axis Bank to defreeze the bank account, the Complainants had informed vide their letter dated 16-02-2017 about the filing of the case vide Company Petition No.822 of 2016 before the NCLT and requested the bank to reject any representations from the Accused to defreeze the bank account. The A.1 filed a criminal complaint vide FIR No.605/ 2016 dated 18-10-2016 against the Complainant No.1 and two others u/ sec.408 and 420IPC before the Madhapur Police Station, Cyberabad. Aggrieved by said complaint, the Complainant No.1 and two others filed CrI.P.No.42591/ 2016 before the High Court and the same was disposed on 07-12-2016 by directing the Police not to arrest the petitioners and directing the petitioners to appear before the Investigating Officer and execute a personal bond for future appearance. Having illegally appointed Additional Directors and got control of the Board of the Company, the A.1 and A.2 indulged in massive looting in selling away the real estate assets of the Company. The accused without any legal authority, power or resolution and without informing the other shareholders, had illegally and fraudulently executed registered sale deed on 26-09-2016, representing the Company as Directors and transferred the land belonging to the company to his personal name and these actions are illegal, arbitrary nothing but cheating apart from serious act of misappropriation of the Company's property. The Company purchased under agreement of sale-cum-General Power of Attorney a land owner by name Smt.K.Ratnamala W/o. K.Rajasekhar an extent of 1840 sq. yards in Sy.No.240, situated in Shilpa Nagar, Nagaram Village, Keesara Mandal, R.R.District (which now comes under Medchal Malkajgiri District) vide document No.1646/ 2011 dated 02-05-2011 and developed said land into an Apartment building known as "HMR Delight" with 40 flats and out of them about 28 flats were sold by the Company and the balance flats yet to be sold were 12 flats. The A.1 fraudulently

sold away said 12 flats to his own benami persons and other persons and appropriated the amounts to his own account and all the 12 flats were sold away on self-same 31-10-2016, which alone would show the "benami" nature of the transaction. The accused had also fraudulently opened another bank account in "Indian Bank" Banjara Hills, Road No.12, Hyderabad, in the name of the Company and from that account, these funds were transferred to the own accounts of the A.1 and A.2 and aggrieved by the fraudulent actions of the accused, they initially moved an injunction application before the Senior Civil Judge, Ranga Reddy District at L.B.Nagar and an interim injunction in I.A No.981 of 2016 in O.S.No. 1525/ 2016 on 29.09.2016 however, the same was dismissed on jurisdictional issue. Pursuant to the return of the suit in O.S.No.1525/ 2016 for want of jurisdiction, the Complainants No.1 and 2 had therefore, moved before the NCLT, Hyderabad vide CP No.60/ 2016 and the same was allowed declaring that the Board Meetings held on 12.09.2016 as illegal, void, *ab initio* and consequently set aside the consequential proceedings passed therein appointing the respondents 3 to 10 (A.3 to A.10) and also the impugned sale deed dated 26.09.2016. Pursuant to the orders passed by the NCLT, Hyderabad, in CP No.60 of 2016, the conduct of the Accused being illegal and confirmed and declared by judicial orders. Hence, the actions of the A.1 and A.2 being fraudulent and illegal also attract the provisions supra.

3. The contentions in the quash petition are that the defacto-complainants suppressed the fact that they filed O.S.No.15 of 2016 on the file of the District Court, Mahaboobnagar and the complainants allegations mainly against the A.1 and A.2, whereas, the A.1 filed against the Complainant No.1 a police report covered by Cr.No.605 of 2016 supra where after filing charge sheet, it is pending as C.C.No.828 of 2018 for so called siphoning of Ac.4,24,64,425/- which facts not disclosed in the private complaint supra as private complaint was filed on 08.01.2018 and Calander Case number was allotted subsequent to that and crime number was already mentioned as referred supra. It is also contended that the complaint averments are false and when the petitioners A.9 and A.10 among A.3 to A.10 were informed to attend the Board of Directors of the Company in HMR Infra

Projects Private Limited and their role in attending the Board Meeting on 04.09.2016, 23.09.2016, 03.11.2016 is as newly appointed Additional Directors covered by Section 161 of the Companies Act and their induction and joining as Directors or Additional Directors will not constitute any offence of cheating or fraud either under IPC or under Companies Act and the petitioners already resigned from the Board of Directors duly submitted Form No.17 with Registrar of the Companies and as such they are no way connected with the affairs of the company w.e.f.03.11.2016 and whatever acts and deeds done by the petitioners is being in the capacity of the Board of Directors of the defacto-complainant and has been done the in good faith, without malafides and as per provisions of the Act, 2013 and rival disputes among other Directors will not entitle to rope the petitioners into grave crime and thereby the proceedings are liable to be quashed.

4. The contention of the learned counsel for the petitioners is by drawing attention of the Court to Section 439 of the Act, 2013 which reads, the offences to be non-cognizable notwithstanding anything in the CrPC, every offence except the offences referred to in sub-section (6) of section 212 of the Act, 2013, and the offences to be non-cognizable notwithstanding anything in the Code” to take cognizance by any Court and offence covered u/sec.447 of the Act shall be cognizable and coming to section 447 of the Act it deals with the punishment for fraud - Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud: and the Explanation *for the purpose of this Section shows*– i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful

loss; ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled; iii). “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.”

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents 2 to 4/complainants and also the learned Public Prosecutor representing State-1st respondent and perused the material on record.

6. No doubt in the complaint, the main allegations are against the A.1 and A.2 of inducted A.3 to A.10 by a fake and created meeting without prior agenda or without prior notice with details and in saying the other accused are privy to it in joining as Additional Directors and in creating resolution, causing wrongful loss to them to have wrongful gain. The petitioners submitted their resignations and the resignation of A.9 was dt.03.11.2016 saying due to commitments and personal pre-occupations not in a position to continue as Director of the Board, hence tendering his resignation with effect from that date and Asst. Registrar of the Companies certified the same and A.10 resignation is equally with the self-same reason which is also certified. The private complaint as referred supra was on 08.01.2018 and the resignations were on 03.11.2016 itself according to them.

7. There is practically nothing to show that in between they made any fraud or other offence but for from the admission; since they resigned practically with no lapse of time, to subserve the ends of justice, the proceedings are liable to be quashed against the petitioners, however such concession will not be available in the factual matrix against other continuing Directors as on that date.

8. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioners/ A.9 and A.10 in C.C.No.22 of 2018 on the file of the Special Judge for Economic Offences, Nampally and they are acquitted. Their bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

Date:18.03.2019
Vvr

Dr. B.SIVA SANKARA RAO J,