

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.1338, 1340, 1341 and 1345 of 2021
and
WMP Nos.1504, 1505, 1506 and 1510 of 2021

V.V. Renewable Energy Private Limited
Represented by its Director,
J.Centhilrajan ... Petitioner in W.P. No.1338 of 2021

V.V. Titanium Pigments Private Limited
Represented by its Director,
J.Centhilrajan ... Petitioner in W.P. No.1340 of 2021

Dhanalakshmi Srinivasan Sugars Private Limited
Represented by its Director,
J.Centhilrajan ... Petitioner in W.P. No.1341 of 2021

Ajax Media Tech Private Limited
Represented by its Director,
J.Centhilrajan ... Petitioner in W.P. No.1345 of 2021

Vs

1. The Registrar of Companies,
Shastri Bhavan
II Floor,
26, Haddows Road,
Chennai - 600 006.

2. S.Vaikundarajan ... Respondents in W.P. Nos.1338,
1340 and 1341 of 2021

2. V. Subramanian ... Respondent in W.P. No.1345 of 2021

Common Prayer : Writ Petitions filed under Article 226 of
the Constitution of India to issue a Writ of Certiorari, calling
for the records relating to the proceedings in F.No.Roc-
Chn/IPC/88883/2020 (J006072020), F.No.Roc-Chn/IPC/82322/2020
(J00052454), F.No.Roc-Chn/IPC/64381/2020 (J00052446) and
F.No.Roc-Chn/IPC/98211/2020 (J00052461) respectively issued

vide notices dated 16.07.2020, 17.07.2020 and 17.12.2020 on the file of the Registrar of Companies, the respondent No.1 herein and quash the same.

For petitioner in all W.P.s ... Mr.Vijay Narayan
Senior Counsel for
Mr.Y.Prakash

For R1 in all W.P.S ... Ms.P.J. Anitha,
Central Govt. Standing counsel

For R2
in W.P. No.1338 of 2021 Mr.V.Lakshmi Narayanan
for M/s.Kingsly Solomon
in W.P. No.1340 of 2021 Mr.Karthik Seshadri for
M/s.K.Aravintha Bharathi
in W.P. No.1341 of 2021 Mr.S. Elambharathi
in W.P. No.1345 of 2021 Mr.M.K.Kabir,
Senior Counsel
for M/s.J.Johnsy Greeta

COMMON ORDER

These writ petitions have been filed challenging the summons issued by the 1st respondent (Registrar of Companies) to the respective petitioners under Section 206 of the Companies Act, 2013, directing the respective petitioners to appear on a specified date and submit all the registers/documents before the 1st respondent pertaining to the vacation/removal of the respective second respondent and his family members as directors in the group companies under section 167 and 169 of the Companies Act, 2013 respectively.

2. The summons under Section 206 of the Companies Act have been issued by the 1st respondent based on a complaint given by the respective 2nd respondent in all these writ petitions. S.Vaikundarajan and S. Jegatheesan are brothers and there are certain family disputes between themselves. They are Directors of various Companies. The 2nd respondent Vaikundarajan in W.P. Nos.1338, 1340 and 1341 of 2021 and the 2nd respondent V. Subramanian in W.P.No.1345 of 2021 have given separate complaints under Section 206 of the Companies Act with the 1st respondent on 06.07.2020 against S. Jegatheesan and other members of his family, who are holding shares in various Companies along with the respective 2nd respondent on the ground that the Resolutions passed by S. Jegatheesan and his family members in June and July 2020, removing the respective 2nd respondent and his family members as Directors of various Companies viz., M/s.V.V. Renewable Energy Private Limited; M/s.V.V. Titanium Pigments Private Limited; M/s.Dhanalakshmi

Srinivasan Sugars Private Limited and M/s.Ajax Media Tech Private Limited have been fraudulently passed without the concurrence of the respective 2nd respondent and his family members, who are also having shares in the said Companies. Acting on the complaint dated 06.07.2020, the 1st respondent has issued the impugned summons dated, 16.12.2020, 17.12.2020, 17.12.2020 and 17.12.2020 to the respective petitioners calling for explanation and calling upon them to appear for enquiry.

3. Aggrieved by the aforesaid summons, the respective petitioners have filed these writ petitions. Since the issue involved in all these writ petitions are one and the same, this Court disposes of these writ petitions by a common order.

4. Heard Mr.Vijay Narayan, learned Senior Counsel assisted by Mr.Y.Prakash, learned counsel appearing for the petitioner in all Writ petitions; Ms.P.J. Anitha, learned Central Govt. Standing counsel appearing for the 1st respondent in all Writ Petitions; Mr.V.Lakshmi Narayanan, learned counsel appearing for the 2nd respondent in W.P. No.1338 of 2021; Mr.Karthik Seshadri for Mr.K.Aravintha Bharathi, learned counsel appearing for the 2nd respondent in W.P. No.1340 of 2021; Mr.S.Elambharathi, learned counsel appearing for the 2nd respondent in W.P. No.1341 of 2021 and Mr.M.K.Kabir, learned Senior Counsel assisted by Ms.J.Johnsy Greeta, learned counsel appearing for the 2nd respondent in W.P. No.1345 of 2021.

5. Mr.Vijay Narayanan, learned Senior counsel drew the attention of this Court to the complaint dated 06.07.2020 lodged by the 2nd respondent in W.P. Nos.1338, 1340 and 1341 of 2021 and would submit that subsequent to the impugned summons, the DIR form for vacating / removal of directors, which was returned by the 1st respondent was not re-submitted by the respective petitioners and therefore, according to him, without jurisdiction and without any basis, the 1st respondent is proceeding with the enquiry under Section 206 of the Companies Act. He then drew the attention of this Court to the letter dated 20.01.2021 sent by the respective petitioners to the 1st respondent intimating them that DIRs have not been re-presented and the respective petitioners have also decided not to give effect to the Resolution removing the respective 2nd respondent and his family members as Directors from the respective Companies, due to pending mediation proceedings. Therefore, he would submit that the enquiry under the impugned summons is not necessary as the very Resolution passed by the respective petitioners which is the subject matter of the complaint given by the respective second respondent has been dropped.

6. Mr.Vijay Narayan, learned Senior Counsel also drew the

attention of this Court to the mediation proceedings pending before the Mediators comprising of Hon'ble Mr.Justice Shivaraj Patel (Retd.) and Hon'ble Mr.Justice K.Kannan (Retd.), pursuant to the directions given by this Court in CRP (MD) Nos.1797 to 1799 of 2019. He would submit that the mediation is still going on and therefore, there is no necessity for investigating the complaint given by the respective 2nd respondent under Section 206 of the Companies Act before the 1st respondent.

7. Per contra, Mr.M.K.Kabir, learned Senior Counsel appearing for the 2nd respondent, assisted by Mr.Lakshmi Narayanan; Mr.Karthik Seshadri for Mr.K.Aravintha Bharathi; Mr.S.Elambharathi and Ms.J.Johnsy Greeta, learned counsels would submit that these writ petitions have been prematurely filed and it is not maintainable, since the petitioners have challenged the summons issued under Section 206 of the Companies Act and according to him, the 1st respondent is having the statutory authority to issue the said summons to investigate into the complaint given by the respective 2nd respondent about the alleged illegal removal of Directors by the respective petitioners. According to him, the respective petitioners have filed these writ petitions to stall the investigation which the first respondent under section 206 of the Companies Act, 2013 is statutorily empowered. Hence according to him, these writ petitions are not maintainable.

8. Ms.P.J. Anitha, learned Central Government Standing counsel for the 1st respondent after drawing the attention of this Court to the counter affidavit filed by the 1st respondent would submit that only in accordance with the statutory powers stipulated under Section 206 of the Companies Act, 2013, the 1st respondent has issued the impugned summons to the respective petitioners.

9. It is settled law that a summon issued under a statutory provision can be challenged only, if it has been issued without jurisdiction and without authority under law.

10. Section 206 of the Companies Act reads as follows :-

"Power to Call for Information, Inspect Books and Conduct Inquiries

(1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company-

(a) to furnish in writing such information or explanation; or

(b) to produce such documents, within such reasonable time, as may be specified in the notice.

(2) On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar:

Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(3) If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this subsection:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

(5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.

(6) The Central Government may, having regard to the circumstances by general or special order, authorize any statutory authority to carry out the inspection of books of account of a company or class of companies.

(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.

11. The case of the respective 2nd respondent is that the respective petitioners have passed a fraudulent Resolution in the month of June and July 2020, without any authority removing the respective 2nd respondent and his family members as Directors in M/s.V.V. Renewable Energy Private Limited; M/s.V.V. Titanium Pigments Private Limited; M/s.Dhanalakshmi Srinivasan Sugars Private Limited and M/s.Ajax Media Tech Private Limited. According to them, the Resolutions have been fraudulently passed. The respective 2nd respondent have given separate complaints on 06.07.2020 with the 1st respondent seeking to initiate action, calling upon them to take action against the respective petitioners. The 1st respondent under the impugned summons have only called upon the respective petitioners to submit an explanation with regard to the alleged documents, which the respective 2nd respondent have alleged that they have been fabricated by the respective petitioners in order to play fraud upon the 2nd respondent and his family members. In the impugned summons, the respective petitioners have been only

called upon to attend an enquiry on the specified date and submit documents, in respect of the complaints given by the respective 2nd respondent under Section 206 of the Companies Act. Even before investigation of the complaint and even before considering the objections to the impugned summons by the first respondent, the petitioners have approached this Court.

12. The respective petitioners have raised the following contentions before this Court :

a) The respondent No.1 failed to see that the power under Section 206 of the Companies Act cannot be exercised with regard to the internal disputes in Management of a Company.

b. The Respondent No.1 has no jurisdiction to conduct an enquiry regarding the contentious issues under Section 206 of the said Act.

c) The Respondent No.1 failed to see that it can only call for particulars with regard to the affairs of the company and cannot adjudicate the validity of the reply furnished by the company when the issue raised by the complainant requires adjudication.

d) The power under Section 206 of the Act is only recommendatory and not adjudicatory as such when the adjudicatory fora are seized of the matter viz., the issues between the parties, the respondent No.1 cannot hold any enquiry with regard to the same.

e) The proceedings arising out of the complaint dated 06.07.2020 of the Respondent No.2 which is pending before the civil Court for adjudication, the Respondent No.1 has no jurisdiction to conduct enquiry with regard to the same issue.

f) When the parties are already mediating amongst themselves before the Mediators appointed by the Hon'ble High Court, the question of Section 206 of the Companies Act, will not arise.

g) When the respective petitioners' Companies have decided not to press the Resolutions dated 02.07.2020, removing the 2nd respondent and his family members as Directors, the question of Section 206 of the Companies Act, will not arise as the very basis for the issuance of impugned notice under Section 206 no longer survives.

h) The Notices dated 16.12.2020, 17.12.2020, 17.12.2020 and 17.12.2020 issued under Section 206 (4) of the Act pre supposes a preliminary enquiry and only upon non compliance of the requirements, their enquiry or inspection of records is contemplated whereas no such preliminary enquiry was conducted and thus the issue of notice under sub section 4 of Section 206 of the Act by the 1st respondent is illegal and arbitrary.

13. Section 206 of the Companies Act, 2013 gives the Registrar of Companies, the power to call for information, inspect books and conduct inquiries in respect of any company. Under Section 206 of the Companies Act, the Registrar of Companies is required to issue a written notice and provide an opportunity to the company to show-cause and respond to the request for documents or information or explanation.

14. Section 206(2) of the Companies Act gives the company an opportunity to respond to such notice and only if the Registrar of Companies is of the opinion that the documents or information or explanation are inadequate or if unsatisfactory state of affairs exists at the company, that a written notice can be issued by the Registrar of Companies. With an intention of ensuring that the power of the Registrar of Companies to call for inspection of the books and papers of the company is not misused in an arbitrary and unreasonable manner, the proviso to section 206(3) provides that before any notice is issued under this sub-section, the Registrar of Companies shall record the reasons in writing for issuing such notice.

15. Similarly, even under section 206(4) of the Act, the Registrar of Companies is required to issue a notice in writing if he is satisfied, on the basis of information available with him, or furnished to him on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance to the provisions of the Act, or if the grievances of investors are not being addressed. The above provisions have ensured that there are checks and balances on the use of power by the Registrar of Companies.

16. The impugned summons have been issued under section 206 (4) of the Companies Act calling upon the named directors to appear for hearing and submit the requisite information / explanation with supporting documents. In the impugned summons, the Registrar of Companies has considered the reply sent by S.Jegatheesan, the Managing Director of the subject companies and has observed that upon examining such reply with supporting documents, it was noted that no dispatch proof and acknowledgement proof for notice issued to all the directors for conducting Board Meeting from 01.04.2019 to 10.07.2020 and copy of Board resolution from 01.04.2019 to 10.07.2020 was not furnished.

17. Under the impugned summons, the Registrar of Companies has observed that it is not clear as to whether the respective

petitioners have complied with the provisions of Section 167 and Section 169 of the Companies Act, 2013, as the case may be, for vacating/removal of the directors or not and only for the said purpose, as contemplated under section 206(4) of the companies Act, the impugned summons have been sent to the respective petitioners for further clarification/enquiry. Admittedly, no final orders have been passed on the respective second respondents' complaints under section 206 (7) which empowers the Registrar of Companies to punish the company and every officer of the company in the event of the company failing to furnish any information or explanation or produce any document required under section 206 of the Act. Even before any adverse order has been passed against the respective petitioners under section 206 of the Companies Act, the respective petitioners have filed these writ petitions prematurely challenging the impugned summons issued under section 206(4) of the Act calling upon the directors of the respective companies to appear for hearing to submit their further explanation with supporting documents. As observed earlier, it settled law that only in cases where the summons have been issued without jurisdiction or without authority under law, the writ petition is maintainable.

18. In the case on hand, the impugned summons have been issued by the Registrar of Companies only in accordance with the procedure contemplated under Section 206(4) of the Companies Act. The Registrar of Companies has also given reasons for seeking further explanation from the directors of the respective companies. He has observed that the respective directors of the respective companies have not produced the dispatch proof and the acknowledgement proof for having sent the notices to all the directors for conducting Board Meeting from 01.04.2019 to 10.07.2020. Therefore only in accordance with section 204 of the Act, the respective impugned summons have been sent to the respective petitioners calling for further clarification / explanation.

19. For the foregoing reasons, this Court is of the considered view that these writ petitions have been filed prematurely, even before passing of any adverse orders by the Registrar of Companies against the respective petitioners. Any interference by this Court at this stage under Article 226 of the Constitution of India will amount to stalling the investigation initiated under section 206 of the Companies Act which is not permissible under law.

20. However, Registrar of companies will have to necessarily consider all the objections raised by the respective petitioners with regard to the complaint lodged by the respective second respondent under section 206 of the companies Act. The objections raised by the respective petitioners which have been

extracted supra in paragraph 12 in this order will have to be considered by the Registrar of Companies before passing any adverse orders against the respective petitioners.

21. In view of the premature filing of these writ petitions which would amount to stalling the investigation, these writ petitions are disposed of by giving a direction to the first respondent to proceed with the inspection, enquiry and investigation under section 206 of the Companies Act, 2013 against the respective petitioners by giving them sufficient opportunity to raise all legal objections and also by permitting them to produce all documentary evidence in support of their case and the respective second respondent and their family members who have been vacated/removed as Directors shall also be afforded a fair hearing in respect of their allegations levelled against the respective petitioners and the procedure contemplated under Chapter-XIV of the Companies Act, 2013 dealing with Inspection, Enquiry and Inspection shall be strictly followed. The interim stay already granted by this Court in WMP Nos.1504, 1505, 1506 and 1510 of 2021 on 22.01.2021 shall stand vacated to enable the first respondent to proceed further in the investigation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2/nl

To
The Registrar of Companies,
Shastri Bhavan
II Floor, 26, Haddows Road, Chennai - 600 006.

+4 cc to M/S.P.J.Anitha, Advocate Sr Nos.20830,20829,20831 & 20828

+2 cc to M/S.Y.Prakash, Advocate Sr Nos.20922 & 20923

+2 cc to M/S.A.V.Arun, Advocate Sr Nos.20920 & 20921

+1 cc to M/S.J.Johhnsy Greeta, Advocate Sr No.20947

+1 cc to M/S.K.Aravintha Bharathi, Advocate Sr No.20945

+1 cc to M/S.S.Elam Bharathi, Advocate Sr No.20946

+1 cc to M/S.Kingsly Solomon, Advocate Sr No.20944

W.P. Nos.1338, 1340,
1341 and 1345 of 2021

PKM(CO)
RG.23.04.2021(10P/14C)