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O.A.No.830 of 2021

O.A.No.830 of 2021
in C.S.No.368 of 2021

<i>Reserved on</i>	<i>12.08.2022</i>
<i>Delivered on</i>	<i>17.10.2022</i>

KRISHNAN RAMASAMY.J.,

This application has been filed seeking for grant of interim injunction restraining the respondents herein, from alienating, transferring or encumbering any part of the assets of the first respondent company more particularly as set out in the application schedule.

2. According to the applicants, being legal heirs, they are entitled to succeed the company shares, that were holding by their father, namely Sivaji Ganesan, who passed away on 21.07.2001 and their mother who died on 02.11.2007. According to the applicants, their parents were holding nearly 700 shares in the first respondent company. After the demise of their parents, the petitioners are entitled to 2/5th share in the total 700 shares in the company. It was the further contention of the applicants that the parents died intestate without any Will or deed of settlement. The above suit has been filed for partition of the suit properties and for permanent injunction.



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3. The learned counsel appearing for the applicants would submit that without any Board Meeting on 23.01.2015, the respondents 3 and 4, who were the Directors of the Company entered into Joint Development Agreement on 02.03.2015 in favour of the second defendant to develop the suit schedule property and further on the same day, a Power of Attorney, dated 02.03.2015 was registered in the Office of the Sub-Registrar, Triplicane.

4. According to the learned counsel for the applicants, there was no Board Meeting held on 23.01.2015. In this regard, he referred to the Annual Returns for the year 2014 – 15 wherein, it has not been mentioned anything about the meeting said to have been held on 23.01.2015. Hence, he submits that without conducting a Board meeting, a document was forged and Power of Attorney as well as the Joint Development Agreement were executed on 02.03.2015. Further, on 30.03.2017 also a Power of Attorney was executed along with the supplementary agreement by the first respondent with the second respondent. Even thereafter, one more



supplementary agreement was also executed on 25.02.2021. All these acts are performed by the Directors without any authority of law.

5. The learned counsel appearing for the applicants further submitted that one of the Directors of the first respondent company, got disqualified in terms of Section 164 (2) of the Companies Act 2013 and he got vacated his office for five year term with effect from 01.11.2016 to 30.10.2021. Therefore, after 01.11.2016 there was no quarrel that no new Board Meeting was held since no new Director was appointed. Hence, the Supplemental agreement entered on 30.03.2017 as well as the Power of Attorney are null and void. Therefore, he would submit that all along the respondents 3 and 4 have acted as if they have authority and entered into joint development agreement with the second respondent, pursuant to the same, even the second respondent demolished the entire building and completed the reconstruction. However, as regards the allotment of the shares, there was a fraud committed by the respondents and caused huge loss to the company. That apart, the respondents 3 and 4 have also siphoned off the funds of the company.



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6.The learned counsel would further submit that the sale of the property was in violation of the interest of the company as to return the refundable deposit and that the payments of Rs.12 Crores received as refundable advance, siphoned off to the related party, a defunct company in violation of the provisions of the Companies Act, 2013 despite the fact that the net worth of the first respondent company has eroded in full.

7.The learned counsel further submitted that in terms of Clause – 35 of Memorandum of Association and Article 28 of Articles of Association of the first respondent company, the petitioners are entitled for distribution of assets of the company among the shareholders in the event of dissolution after settling the dues of the creditors. Therefore, being share holders, the applicants are entitled to raise the issue even before the dissolution of the company and question the illegal action of the respondents in regard to the mismanagement of the company, siphoning of the deposits and causing loss to the shareholders. The learned counsel pointed out that this is the appropriate Court to deal with the said matters since this Court is deciding



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about the inheritance of the applicants in respect of 700 shares held by their deceased parents. Hence this Court has every right to decide the present issue with regard to the oppression and mismanagement of the affairs of the 1th respondent company and about the siphoning of the amounts said to have been committed by the respondents 3 and 4.

8.The learned counsel for the applicants would further submit that based on the above said deed of Power of Attorney, the respondent 1 and 2 sold the undivided shares of land and also the constructed building therein while the applicants herein are having a share in the estate of their deceased parents and the alleged deed of Power Attorney is not binding on the applicants. The Counsel further pointed out that if the second respondent succeeds in his attempts in selling the undivided shares of land including constructed building of the first respondent company, the applicants would be put to irreparable loss and the same would defeat the legitimate rights of the applicants. Hence the learned counsel prayed for grant of the interim injunction as sought for, pending disposal of the suit.



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9.Mr.P.R.Raman, learned Senior Counsel appearing for the respondents 1, 3 and 4 and Mr.Satish Parasaran, learned Senior Advocate appearing for the 2nd respondent, would submit that the first respondent company passed a resolution in its Board Meeting on 23.01.2015 to enter into a Joint Development Agreement with the second respondent while at that point of time only 3rd and 4th respondents were the Directors of the first respondent company and subsequent to the passing of the said resolution, a Joint Development Agreement was entered with the first and second respondents and a Power of Attorney was also registered dated 02.03.2015 with the Sub-Registrar, Triplicane and thereafter, one more Power of Attorney was registered on 30.03.2017 as well as a supplementary agreement was also entered on the same day i.e. on 30.03.2017 between the first and second respondents and as per the said agreement, the construction was completed and thereafter, the second respondent started selling their shares of property. The 3rd and 4th respondents have acted only for the benefit of the first respondent company and at no point of time, they have acted against the interest of the first respondent company.



10. In the present case, the applicants made a challenge with regard to the resolution of the Board Meeting dated 23.01.2015 and execution of Power of Attorneys and entering into the Supplementary Agreements with the 2nd respondent, claiming that they are entitled for a share in the property of their deceased parents including their shares in the first respondent company. Even though there is no bar for this Court to deal with the inheritance and entitlement of shares of the applicants, but in the present case, it appears that the entire shares were transmitted in terms of the Will executed by the applicants' parents. In this regard, an application was also filed by the applicants, challenging the transmission of shares which is also pending before the National Company Law Tribunal at Chennai bench and only after the rectification of shares, if ordered by the NCLT, then only the applicants are entitled to claim shares in the first respondent company and hence, at present, the applicants are not entitled to any shares as claimed by them. Hence it is not open for them to question about the Board Resolution and consequential Joint Development Agreement as well as supplemental agreements entered between the first and second respondents. That apart, even assuming that the applicants are entitled to 2/3rd share, it would at best



stretch to 2.75% of the company's shareholding. In the present case, a resolution was passed at the Board Meeting held on 23.01.2015, when there were two Directors, viz., 3rd and 4th respondents herein. Mere non-mentioning of the particulars regarding the conduct of the Board Meeting on 23.01.2015 in the Annual Report of the first respondent company for the year 2014 – 15, it would not invalidate the Board Meeting held on 23.01.2015 and the resolution passed therein, but the said lapse may entail penal consequences under Section 117 of the Companies Act. However, the same Annual Report reflected the fact of entering into the Joint Development Agreement and receipt of advance to a tune of Rs.10.00 Crore from the second respondent. Hence, according to the respondents, there is no merit in the submission made by the applicants. As regards the disqualification of the third respondent under Section 164(2) r/w 167 (1)(a) of the Companies Act, 2013 is concerned, it is submitted by the respondents that as proviso to Section 167(1)(a) of the Act, came into force only with effect from 7.5.2018, by which time, the authority of the Board of Directors of the first respondent Company had been exercised by the third respondent. However, it has been fairly admitted that the 3rd respondent was disqualified



in some other company for non filing of the annual returns, but that would not automatically disqualifies the Directorship in the first respondent company in terms of Section 164 (2) read with Section 167 (1) (a). Further, the learned counsel would submit that a proviso was introduced to section 167 (1) (a) as follows:

“167. Vacation of office of director. - (1) The office of a director shall become vacant in case -

(a) he incurs any of the disqualifications specified in section 164.

“Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.”

11.It is to be noted that the above proviso came to be inserted by way of Companies (Amendment) Act, 2017, dated 03.01.2018 which came into effect from 07.05.2018 only. Therefore, by no stretch of imagination, the act performed by the third respondent in the capacity as Director of the first respondent company up to 07.05.2018, cannot be questioned.



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12.The learned Senior Counsel would further submit that these all are purely internal affairs of the Management and the third party, like 2nd respondent has no role to play. The resolution was passed on 23.01.2015 at the Board meeting and furnished a certified copy of resolution and as such, respondents 3 and 4 performed as Directors of the first respondent company and hence, by no stretch of imagination, the applicants could claim that there was no Board Meeting held at all on 23.01.2015 and consequently, all the other acts conducted by the respondents 3 and 4 during the said Board Meeting would become invalid and not sustainable in the eye of law. Even assuming if the third respondent was disqualified and even construed him as third party acted as Director and executed certain acts, the said act cannot be questionable as long as he was allowed to act as Director of the company itself. Therefore, he would submit that no *prima-facie* case was made out and hence, the applicants are not entitled for grant of interim injunction.

13.I have given my anxious consideration to the submissions made by the learned counsel appearing for the applicants as well as the learned



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Senior Counsel appearing for the respondent Nos.1, 3 and 4 and perused the entire materials placed on record.

14.The present issue is revolving around the entitlement of the applicants in respect of total 700 shares held by their deceased parents in first respondent company. The first respondent company has total paid up share capital of 13,000 shares and out of said 13,000/- shares, the applicants' parents were holding 700 shares which constitutes 5.5% only of the overall shareholding of the company. It is not in dispute that even assuming the parents of the applicants died intestate without any Will, the applicants are entitled to 2/4th share alone. However, the fact that the transactions concerning the company's property have been consented to by the majority and the same was not challenged by the applicants.

15.Now the main issues that arise for consideration before this Court is as follows:

i) Whether the resolution passed in the Board of Meeting held on 23.01.2015 is valid and the consequential execution of Power of Attorney, Joint Development Agreement, dated



02.03.2015 and the supplemental agreements entered between the first and second respondent based on the said Board Resolution, are sustainable in law?

ii) Whether the third respondent was disqualified under Section 164(2) read with Section 167 (1) (a) of the Companies Act, 2013 for a period of 5 years, from 01.11.2016 till 20.10.2021?

16.As far as the first issue is concerned, it is not in dispute that at the relevant point of time, in the first respondent company, there were two Directors, namely, third and fourth respondents.

17.According to the respondents, there was a Board Meeting held on 23.01.2015 and passed a resolution for entering into a Joint Development Agreement between first and second respondents vis-a-vis for execution of power of attorney. The learned senior counsel appearing for the third and fourth respondents reiterated that there was a Board Meeting held on 23.01.2015. On the other hand, the learned counsel for the applicants strongly opposed the contention of the respondents with regard to the



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conduct of the meeting on 23.01.2015 since in the annual report of the first respondent company for the year 2014 – 15, nothing has been incorporated in the appropriate column with regard to the conduct of the Board Meeting on 23.01.2015 and disclosing the conduct of the meeting in the annual report in the particular column is mandatory and since it was not disclosed, it is to be construed that virtually there was no meeting held on 23.01.2015 and no resolution was passed and as such, all consequential acts performed based on the said resolution would be invalid. This Court is not in a position to accept the contention raised on behalf of the applicants for the simple reason that mere non-disclosure of conduct of the meeting in the annual report inadvertently or erroneously, it would not invalidate the Board Meeting held on 23.01.2015 itself as long as that there was no denial as regards two Directors, viz., third and fourth respondents who participated and conducted the meeting and non-mentioning of the same in the annual report of the first respondent company, may be termed as violation in terms of the provisions of the Companies Act, 2013 which would ultimately at best be held liable for prosecution against the applicants and respondents 3 and 4 and make them liable for payment of fine and such offence would be



compoundable in nature. Such being the case, the sole contention raised on behalf of the applicants that all the acts performed based on the invalidation of the meeting are not sustainable, is untenable and cannot be sustained.

18.A submission has also been made on behalf of the 2nd respondents as regards the indoor management of the first respondent company. The principles of indoor management has been well recognized and the law is well settled on this aspect. Even assuming the execution of agreements entered with the 2nd respondent suffer from lack of authorization as one of the Directors was disqualified during the Board meeting, the same is a matter of indoor management of the company and any irregularity in internal procedure, does not affect the transactions entered with bona fide third party, who is the 2nd respondent herein, and he cannot go into the internal affairs of the first respondent company and find out whether the Board meeting was convened or not and resolution was passed, etc. Apart from this, during the Board meeting and passing of the resolution, there was no opposition and it was approved by majority of the members. Further, there is no role for the second respondent, who is an outsider to question



about the conduct of the meeting or to suspect the authorization to enter with Joint Development Agreement, Power of Attorney and other supplemental agreements with the 2nd respondent. Apart from this, it is pertinent to note that the Annual Report for the year 2014-15 clearly reflected the fact of entering into the Joint Development Agreement and receipt of advance to a tune of Rs.10 Crore from the second respondent. Therefore, this Court finds considerable force in the contentions put forth on behalf of the respondents to the effect that there was a Board meeting of the first respondent company held on 23.1.2015 and there were two Directors, viz., respondents 3 and 4 and passed a resolution, giving authorization to enter into the Joint Development Agreement, Power of Attorney and other supplemental agreements with the 2nd respondent and based upon the said resolution only, the respondents have acted upon and this Court does not find any irregularity or infirmity therein in order to hold that the resolution is not a valid one. Accordingly, this Court is of the view that the consequential execution of Power of Attorney, Joint Development Agreement, dated 02.03.2015 and the supplemental agreements entered between the first and second respondent based on the said Board Resolution



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are *prim facie* valid and no interim relief as sought for by the applicants, can be granted.

19.As far as the next issue, viz., Whether the third respondent was disqualified under Section 164(2) read with Section 167 (1) (a) of the Companies Act, 2013 for a period of 5 years, from 01.11.2016 till 20.10.2021.

20.The learned Senior Counsel appearing for the respondents 1, 3 and 4 fairly submitted that it was true that the third respondent was disqualified as regards some other company for non-filing the annual reports, but that itself would not disqualify the third respondent to be a Director of the first respondent automatically in terms of Section 164 (2) read with Section 167 (1) (a). It is relevant to extract Section 167 (1) (a) of the Act, which reads as follows:

“167. Vacation of office of director. - (1) The office of a director shall become vacant in case -

(a) he incurs any of the disqualifications specified in section 164.



“Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.”

21.A perusal of the above, it is clear that the office of a Director shall become vacant in the event he incurs any of the disqualification specified in Section 164, however, if he incurs disqualification under sub-Section (2) of Section 164(2), his Office becomes vacant in all the companies other than the company which is in default under that sub-section. It is to be noted that the above proviso came to be inserted by way of Companies (Amendment) Act, 2017, dated 03.01.2018 with effect from 07.05.2018 only. Therefore, as rightly submitted by the learned Senior Counsel for the respondents, by no stretch of imagination, the act performed by the third respondent in the capacity as Director of the first respondent company up to 07.05.2018, can not be questioned. In this regard, it is worthwhile to refer a decision of the Karnataka High Court in “*Yashodhara Shroff Vs. Union of India*”, reported in (2019) SCC Online Kar 682, wherein, a challenge was made to the proviso under Section 167(1) of the Act and while dealing with the



same, the High Court of Karnataka has held as under:

“181. However, I do not find that the said provision is arbitrary inasmuch as a director who suffers disqualification as per Section 164 (2) of the Act cannot be re-appointed as a director of the defaulting company as well as any other company for a period of five years. The said consequence stems immediately after the company in which a person is a director does not comply with Section 164 (2) of the Act. When a director cannot be re-appointed in the defaulting company or in any other company for a period of five years from the date of disqualification, by the same logic, the director cannot be permitted to continue as a director in any other company. The short term effect of the non-compliance of Section 164 (2) of the Act by a company is that the director in all companies where he is a director. The whole object and purpose of such a provision is to ensure that a director of a defaulting company does not continue to hold the office of the director in any company, while at the same time, he is ineligible to be appointed as a director in the defaulting company or in any other company. In other words, when there is ineligibility for a director of a defaulting company to be re-appointed as a director of the defaulting company or appointed as a director of any other company, then by the same logic he cannot be permitted to be continued as a director in the defaulting



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company or in any other company.

The disqualification on account of non-compliance under Section 164 (2) of the Act implies that the director is a part of the Board of Directors of a company who has not complied with the requirements of Section 164 (2) of the Act. Such a director cannot be permitted to hold the office of a director in any other company also. In other words, the object and purpose of vacating the office of a director of a defaulting company in the defaulting company and in all other companies in which he is a director is in the interest of transparency, probity and protection of share holders' rights. It is also in order to achieve greater accountability in corporate governance. For the same reason, it is held that Section 167 (1) (a) of the Act is also not unreasonable as it has been made in public interest and is not in violation of Article 19 (1) (g) of the Constitution as it is save under Article 19 (6) of the Constitution.”

22.Further, a Division Bench of the Court also made same observation in W.P.No.32763 of 2019. Therefore, since the above proviso came to be inserted by way of Companies (Amendment) Act, 2017, dated 03.01.2018 only with effect from 07.05.2018, it cannot be given



retrospective effect and as such, the disqualification of the third respondent would take effect only from 07.03.2018 and till then, all the acts performed by the third respondent in the capacity as Director of the first respondent company, cannot be held as invalid. Even assuming if the third respondent was disqualified and even construed him as third party acted as director and executed certain acts, the said act cannot be questionable as long as was allowed to act as the Director of the Company itself and all the said acts cannot be nullified at any event.

23.In the light of the above discussion, this Court is of the view that the applicants have not made out any *prima facie* case to grant interim injunction as prayed for by them in this application. Further, this Court finds that since the respondents along with their sons, having more shares, viz., 4700 shares than the claim of the applicants to the total 700 shares, if the respondents entered into any transaction with unfavourable terms, in the event of not granting interim injunction, it would cause more prejudice to the respondents than the applicants.



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24. Accordingly, this application stands dismissed. No costs.

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KRISHNAN RAMASAMY.J.,

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Pre delivery Order in
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17.10.2022