

Item-5. 03-02-2023

FMAT 505 of 2022
CAN 1 of 2022

^{sg} Ct. 8

Foundry Cluster Development Association
Versus
Aarkem Infra LLP & Ors.

Mr. Jishnu Chowdhury, Adv.
Mr. Varun Kothari, Adv.
Mr. A. Agarwalla, Adv.
Mr. B.N. Joshi, Adv.
Miss. Priyanka Garain, Adv.

...for the appellant

Mr. Debasish Roy, Adv.
Mr. Krishnendu Sarkar, Adv.
Mr. Anuran Samanta, Adv.
Ms. Meghla Das, Adv.

...for the respondents

It is submitted on behalf of the opposite parties that the interim order under challenge has been extended on 16th January, 2023 till 24th February, 2023.

By consent of the parties, the appeal and the connected application are taken up for hearing and disposed of by this common order.

The appellant is aggrieved by an order by which the Resolution passed in the AGM on 29th November, 2022 was stayed and the appellant was restrained from holding EGM.

Mr. Jishnu Chowdhury, learned Counsel appearing on behalf of the appellant submits that the respondents represented miniscule minority and with a view to disrupting the functioning of the appellant, the said application was filed.

It appears from the impugned order that the learned trial judge has considered the matter and on the basis of the satisfaction being recorded, passed an interim ex-parte order on 13th December,

2022. This appeal has been preferred on 23rd December, 2022. However, during the pendency of the appeal, the interim order was extended on 16th January, 2023 till 24th February, 2023.

Mr. Chowdhury submits that the City Civil Court has no jurisdiction to entertain the application under Section 9 of the Arbitration and Conciliation Act. The plaintiffs were unable to make out any case for the court to interfere with the internal management of the plaintiff. It is submitted that there was no exceptional circumstance which could have persuaded the court to pass any such order as it is well-known that the courts should not ordinarily interfere with any internal decision of a company.

We find that the interim order was extended without recording any reason on 16th January, 2023. However, at the same time, the appellant did not file any application for vacating the interim order or taking point of jurisdiction presumably due to pendency of the appeal.

Be that as it may, we feel that the trial court could have allowed the appellant to hold EGM subject to the result of the injunction application as ordinarily the Civil Court shall not interfere with the internal management of a company. The ex-parte order could have been awarded having regard to the prejudice likely to be caused by such order.

On such consideration, we modify the interim order to the extent that the appellant would be entitled to hold EGM and participation in the EGM by the plaintiffs shall be without prejudice to the rights and contentions of the plaintiffs.

Any participation of the plaintiffs in the said EGM shall not create any bar or any estoppel to challenge any such decision in

future if occasion arises. However, any resolution passed in the EGM shall not be given effect to till 24th February, 2023 when the matter is fixed for further consideration or till such time as the trial court may decide on the adjourned date.

The appellant shall file their objection to the injunction application within one week from date; reply thereto, if any, be filed within one week thereafter. The said direction is peremptory.

In the event no affidavit-in-opposition is filed, the court shall proceed with the matter on the basis of the available materials on record and shall ignore any decision taken in the EGM.

EGM shall be held only upon service of prior notice to the plaintiffs and all the members who were entitled to participate in the EGM.

In the event, the hearing of the application is not concluded on the adjourned date, the trial court may extend the interim order on reasons being recorded therefor. The learned trial court is directed to dispose of the pending application/s as expeditiously as possible without being influenced by the observations made in this order.

Since the appellant is prevented from giving effect to the audited accounts passed in the AGM in view of the order passed by the City Civil Court on 13th December, 2022 the appellant shall not be prosecuted for non-compliance of the relevant provisions of the Companies Act, 2013.

The appeal and the application are accordingly, disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)

