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O.A.Nos.504 to 507 of 2024

O.A.Nos.504 to 507 of 2024
and
Arb.Appln.No.437 of 2024

KRISHNAN RAMASAMY, J.

The application in O.A.No.504 of 2024 has been filed for an order of interim injunction restraining the respondents 1 to 12 from effecting any change in the Management or control of the 1st respondent-Company.

2. The application in O.A.No.505 of 2024 has been filed for an order of interim injunction restraining the respondents 2, 6, 7, 11, 12 and 13 from convening or conducting the Extraordinary General Body Meeting of the shareholders of the 1st respondent-Company proposed to be held on 29.07.2024.

3. The application in O.A.No.506 of 2024 has been filed for an order of interim injunction restraining the respondents 2, 6, 7, 11 and 12 from acting as Additional Directors of the 1st respondent-Company and/or interfere with



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the affairs of the Amended and Restated Joint Development Agreement dated 22.02.2018.

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4. The application in O.A.No.507 of 2024 has been filed for an order of interim injunction restraining the 13th and 14th respondents from registering any transfer of shares or filings relating to the change in Management control or alteration of the shareholding of the respondents 2, 3, 4 and 8 in the 1st respondent-Company.

5. The application in Arb.Appln.No.437 of 2024 has been filed to appoint a Retired High Court Judge or any other competent person to supervise and ensure due compliance and performance of all the obligations and undertakings by the 1st respondent-Company under the JDA.

6. Mr.P.S.Raman, learned Senior counsel appearing for the applicant would submit that these applications were moved to get appropriate orders, as prayed therein, due to the reason that the 2nd respondent had convened



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Extraordinary General Body Meeting (EGM), which is scheduled to be held on 29.07.2024 to regularize 4 Additional Directors and induct them into the Board of the 1st respondent-Company.

7. Further, he would contend that the Additional Directors to be regularize in Item No.1 and 2 are the daughter and son respectively of the 2nd respondent and by appointing these Additional Directors, the 2nd respondent is making an attempt to change the Management, which is contrary to the Clause 19.2 of the Amended and Re-stated Joint Development Agreement dated 22.02.2018 (hereinafter called as “said JDA”), which reads as follows:

“19.2 The Owner shall not transfer the Schedule Property to any third party without the prior written consent of the Developer. The Owner shall not assign or transfer any part of its rights in this Agreement in favour of any third party wholly or partly without the prior written consent of the Developer. Mr. M. Nandagopal (holding 44.86%), Shri. Arvind Nandagopal (holding 3.58%) and M/s Arthos Breweries Private Limited (holding 7.24%) shall continue to



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collectively hold atleast Fifty One Percent (51%) of the paid up share Capital of the Owner until the Completion of the Project and shall not dilute the aforesaid shareholding percentage without the written consent of the Developer. The Owner shall not effect change of control / Management of the Owner without the consent of the Developer.”

8. By referring the last sentence of the above clause, he would submit that in the said clause, it has been stated that the 1st respondent-Company, who was named as owner therein, shall not effect any change in control/Management of the 1st respondent-Company without the consent of the Developer. However, by virtue of inducting 4 more Additional Directors, the 2nd respondent is making an attempt to change the Management of the 1st respondent-Company.

9. Further, he would contend that any decision for the operation of the 1st respondent-Company would be taken only in the Board Meetings and ultimately, only the Managing Directors and the Execution Directors would be in a position to implement the decision of the Board. Therefore, for all



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practical purposes, the Board will be considered as Management and if there is any change in the Board, automatically it would amount to change in the Management of the 1st respondent-Company, which is contrary to the Clause 19.2 of the JDA. Hence, he would contend that any attempt to change the Management by virtue of inducting 4 Additional Directors vide EGM, which is scheduled to be held on 29.07.2024, is directly contrary to the terms and conditions of the JDA and requests this Court to grant an order of interim injunction.

10. Further, he would submit that the last meeting with the Arbitral Tribunal was held on 22.07.2024 and the next meeting was scheduled to be held on 08.08.2024. In the interregnum, it is very difficult to convene the meeting of the Arbitral Tribunal, which is constituted with the three Former Hon'ble Chief Judges of the Supreme Court. Due to the said reason, though the Arbitral Tribunal was already constituted, the applicant is not in a position to move these applications before the Arbitral Tribunal. Therefore, the applicant has approached this Court vide these applications filed in terms of



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the provisions of Section 9(3) of the Arbitration and Conciliation Act, 1996, (hereinafter called as “the Act”).

11. He would fairly submit that after the granting of interim injunction, these applications may be posted before the Arbitral Tribunal to consider these applications as Section 17 applications and pass further orders accordingly.

12. On the other hand, Mr.Vijay Narayan, learned Senior counsel appearing for the 3rd respondent, who is none other than the son of 2nd respondent, would submit that in the 1st respondent-Company, the 2nd respondent holds 44.86% of share and the 3rd respondent holds 3.58% of share and the respondents 4 and 5, who are controlled by the 3rd respondent, are holding 7.24% and 0.5% of share respectively, in such case, the 3rd respondent is, directly and indirectly, holding 11.32% of share. Thus, in total, the respondents 2 and 3 are holding more than 50% of share. The remaining persons are the public shareholders. Therefore, any major decision, including



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the change in Management, may be taken with the support of respondents 2 and 3 alone. Accordingly, the 2nd respondent is now taking steps to induct 4 Additional Directors, which is contrary to the provisions of Clause 19.2 of the JDA.

13. Further, he would contend that initially, the 3rd respondent was appointed as Managing Director and he has also signed the Agreement subsequent to the Board Meeting held on 06.04.2024. In the EGM, which is scheduled to be held on 29.07.2024, they are supposed to ratify the appointment of 3rd respondent as Managing Director by the shareholders. However, no resolution was proposed for the purpose of ratification or approval of the 3rd respondent's appointment as Managing Director.

14. He would also submit that at the time of entering into the JDA, there were 2 Managing Directors viz., the respondents 2 and 3. Even assuming that the entire affairs of the Company would be managed by the aforesaid 2 Managing Directors, even in such case, if any meeting was



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convened without ratification of the resolution passed at the Board Meeting dated 06.04.2024 for the appointment of 3rd respondent as Managing Director, the same would be contrary to the Clause 19.2 of the JDA.

15. Per contra, Mr.AR.L.Sundaresan and Mr.V.P.Balasubramaniam, learned Senior counsel appearing for the respondents 1 and 2 would strongly opposed the submissions made by the learned Senior counsel for the applicant and the 3rd respondent and submit that though more than a sum of Rs.100 Crores is due, the same has not been settled till date. Further, both the learned Senior counsel would contend that a collection was made for around a sum of Rs.80 Crores, out of which, the respondents 1 and 2 are entitled for substantial portion, however, the said amount was also not paid. Under these circumstances only, the EGM has been convened.

16. They would also submit that in the present case, the Arbitral Tribunal have convened its last meeting on 22.07.2024 and the notice with regard to the EGM was sent to the parties on 13.07.2024. Hence, the



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applicant and the 3rd respondent were well aware of the fact with regard to the convening of the EGM, when the previous meeting of Arbitral Tribunal was held. When such being the case, without moving any Section 17 application before the Arbitral Tribunal on 22.07.2024, now they have moved the present applications before this Court under the pretext that it is very difficult to convene a meeting with the Arbitral Tribunal before 08.08.2024 (the date on which the next meeting of the Arbitral Tribunal was scheduled to be held).

17. Further, they would submit that appointing 4 Additional Directors at no cost would affect the JDA. Only the shareholders, having major shares, are going to take a call as to whether the appointment of all the 4 persons as Additional Directors can be regularized or not and it is purely the decision of the shareholders and hence, the Court cannot restrain the shareholders from exercising their rights at the EGM. Therefore, he requests this Court to let the meeting go on and if at all if there is anything, the Arbitral Tribunal shall take appropriate decision in the present subject matter.



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18. I have given due consideration to the submissions made by Mr.P.S.Raman, learned Senior counsel, for the applicant, Mr.AR.L.Sunderasan, learned Senior counsel for the 1st respondent, Mr.Vijay Narayan, learned Senior counsel for the 3rd respondent and Mr.V.P.Balasubramaniam, learned Senior counsel for the 2nd respondent and also perused the materials available on record.

19. In the present matter, though Mr.AR.L.Sundaresan and Mr.P.V.Balasubramaniam, learned Senior counsel appearing for the respondents 1 and 2 contended that it was the shareholders of the 1st respondent-Company, who are going to exercise their rights and the same cannot be restricted in any manner by the Court of Law, this Court is of the view that it is not that this Court is going to restrict or pass orders restraining the inherent rights of the shareholders but the Company itself had consented not to change the Management by virtue of Clause 19.2 of the JDA. However, in the agreed terms and conditions of the said JDA, there is no prohibition to



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restrict the rights of the shareholders to exercise their voting rights in the EGM, since the JDA was entered between the applicant and the 1st respondent-Company alone and not between the shareholders.

20. In the present case, no doubt, the respondents 2 and 3 were Managing Directors at the time of signing of the JDA and the said JDA was entered in the hope that they will continue as Managing Directors and look after the Management until the completion of project. Further, the respondents 2 and 3 are the major shareholders. Therefore, without their consent, it is impossible to make any change in the Management.

21. As far as the submission made by the learned Senior counsel for the 3rd respondent with regard to the Board meeting held on 06.04.2024 is concerned, upon perusal of the outcome of said Board meeting, which was furnished vide letter dated 14.05.2024, it appears that they have listed 6 Directors in the 1st respondent-Company, however, the 3rd respondent's name was not at all mentioned in the said list of Directors. Therefore, *prima facie* it



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appears that there was an attempt to change the Management of the 1st respondent.

22. Further, though the 3rd respondent is supporting the case of the applicant, only with the voting of 2nd respondent, who holds 44.86% of share, the EGM was convened and in such case, certainly, the 4 Additional Directors will be regularized by passing suitable shareholders' resolution and by virtue of that, without holding any share, those 4 Additional Directors will control the Management of the 1st respondent-Company in entirety.

23. In view of the above, this Court is of the *prima facie* view that if any resolution is passed at the EGM, which is scheduled to be held on 29.07.2024, whereby ratifying the appointment of 4 Additional Directors, though the JDA is only between the applicant and the 1st respondent-Company and not with the shareholders of the 1st respondent-Company, since the Managing Director, who represented and signed the 1st respondent-Company in JDA and holds 44.86% of share in the 1st respondent-Company,



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will have moral responsibility not to act against the provisions of JDA, which would ultimately pave way for change in the Management of the 1st respondent-Company and the same will be contrary to the provisions of Clause 19.2 of the JDA. Thus, this Court is inclined to pass the following order:

i) The 1st respondent may go ahead with the EGM as convened by the 2nd respondent and pass the resolutions, however, the said resolutions shall not be given effect/implemented until further orders from the Arbitral Tribunal.

ii) The parties are directed to move the Arbitral Tribunal on 08.08.2024 treating the present applications as Section 17 applications and the Arbitral Tribunal may consider the same and pass further orders in accordingly.

24. With the above directions, these applications are disposed of. No cost.

25.07.2024

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Note: Issue order copy on 26.07.2024.

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