



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 10
384/245/PB/2018

IN THE MATTER OF:

Jacob Mathew

.... Petitioner/Applicant

v.

A.V. George and Ors.

.... Respondent

Order U/s. 245

Order delivered on 19.10.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE & VC)

PRESENT:

For the Petitioner : Adv. Santhanan Krishnan, Adv. Namitha Mathews, Adv. Pulkit Malhotra
For the Respondent : Adv. Goutham Shivshankar for R-7, Adv. Philip Mathew for R-1 to 3 & 8

ORDER

This petition has been filed under Section 245 of the Companies Act, 2013 seeking the following reliefs:-

VI. RELIEF SOUGHT:-

Interim Relief

The Applicant therefore prays that this Hon'ble Tribunal may be pleased to pass Interim Relief-

- A. To declare the exit offer as illegal, non-est and invalid and grant injunction restraining the company, their agents, servants employees from giving effect to the exit offer till final orders.
- B. To direct the appointment of an independent valuer by minority shareholders for determining the valuation of the 8th Respondent company and provide a fresh price for exit by the existing shareholders at the fair value to be determined by independent valuer through such process as may be determined by this Hon'ble Bench as fair and reasonable.
- C. To direct appointment of Independent Director on the Board of the company to consider all resolutions relating to the exit in a fair manner and in the bests interests of all stakeholders.
- D. To order the Respondent no.7 to provide detailed workings for the basis of arriving at the exit price



Final Relief

- A. To ensure that promoters offer a fair exit to the Shareholders.
- B. To direct removal the Directors of the company who have acted against the interests of the shareholders with an intent to defraud the shareholders.
- C. To debar the Respondent No.7 for not conducting the valuation in a fair and transparent manner.
- D. To direct payment up to 100% equivalent compensation of the exit price being proposed as per the independent valuation, to be payable by the Respondent Nos.2 to 7 from their personal assets for having defrauded the shareholders.
- E. To provide an option to such person who offers a better price than the price being offered by the Promoters as exit price, to acquire the shareholding held by the offers also at such better price
- F. To award costs relating to the present proceedings
- G. To grant such other reliefs as this Hon'ble NCLT may deem just and proper in the circumstances of the case.

On 29.10.2018, this Tribunal had issued notice of the petition upon the Respondents. Thereafter, the matter was heard on different dates. Meanwhile, based on the order dated 01.09.2022, Ld. Counsel for the Petitioner sought liberty to file an application to join Mrs. Jacob Mathew as Petitioner No. 2 who is joint holder of the shares, as part and parcel of the proceedings, which was allowed.

Today the matter was heard. It was submitted on behalf of the Petitioner that as per the Rules prescribed by the Ministry vide notification dated 08.05.2019 which reads as follows:-



MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 8th May, 2019

G.S.R. 351(E).—In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the National Company Law Tribunal Rules, 2016, namely :-

1. (1) These rules may be called the National Company Law Tribunal (Second Amendment) Rules, 2019.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the National Company Law Tribunal Rules, 2016 (hereinafter referred to as the principal rules), in rule 84, after sub-rule (2), the following sub-rules shall be inserted, namely: -
 - “(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -
 - (i) (a) at least five per cent. of the total number of members of the company; or
(b) one hundred members of the company,
whichever is less; or
 - (ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;
(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.
 - (4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -
 - (i) (a) at least five per cent. of the total number of depositors of the company; or
(b) one hundred depositors of the company,
whichever is less; or
 - (ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.”
3. In the principal rules, in the schedule of fees, serial No. 28 shall be omitted.

[F. No. 1/30/2013-CLV]

K.V.R. MURTY, Jt. Secy.

In this case, the Petitioner company was a listed company at the time of filing of the Petition and admittedly, the Petitioner Nos. 1 & 2 jointly hold more than 15.73% share of the company, accordingly this application is admissible as per amended rules.

Ld. Counsel appearing for Respondent No. 8 states that he is also appearing on behalf of the Respondent No. 1. He raised a preliminary objection on the maintainability of the petition quoting Section 245 (4) (c) of the Companies Act, 2013 which is extracted below:-

....



(c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;

....

Ld. Counsel appearing for Respondent No. 7 stated that the Petitioner has not made out a case for class action on behalf of a group of investors or shareholders in the Company.

We have heard the Ld. Counsel appearing for the parties. Be that as it may, since the Petitioner No. 1 & 2 meet the threshold as prescribed by the amended rules dated 08.05.2019, we find that this application is maintainable and admissible. Accordingly, we admit the application and direct the Petitioner to comply with the said provisions of Section 245(5).

List the matter on 01.02.2024.

New IA(CA)- 266/2022

This application was allowed vide order dated 23.03.2023 for taking on record the amended memo of parties. However, we direct the Petitioner to file separate amended memo of parties in the main matter.

Registry is directed not to list this IA in any future cause list.

**-Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT**

**-Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)**

19.10.2023
Lalit