

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**  
**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) No. 48/2023**  
**(Filed under Section 421 of the Companies Act, 2013)**

**(Arising out of the Impugned Order dated 16/03/2023 in**  
**TCP/42/KOB/2019, passed by the National Company Law Tribunal,**  
**Kochi Bench, Kerala)**

**In the matter of:**

**Radhakrishnan Babu Nirmala**  
**S/o Babu Rajendran,**  
**TC-4/1490(1), CVRA 28,**  
**Cliff Valley, Kuravankonam Kowdiar,**  
**Thiruvananthapuram – 695003, Kerala**

**...Appellant**

**V**

- 1. Precise Limbus Eye Care**  
**Private Limited**  
**TC-85/975, (Old TC 29/728), DERA 16,**  
**Palkulangara, Pettah P O,**  
**Thiruvananthapuram 695024**  
**Kerala, India**
- 2. Jayaram Velekkat Ravindranathan**  
**S/o Ravindranathan Velekkat Kunjayyappan,**  
**TC-85/975, Prabhatham, DERA 16,**  
**Palkulangara, Pettah P O,**  
**Thiruvananthapuram 695024**  
**Kerala, India**
- 3. Aswathy Chandranath**  
**W/o Jayaram Velekkat Ravindranathan**  
**Prabhatham, DERA 16,**  
**Palkulangara, Pettah P O,**  
**Thiruvananthapuram 695024**  
**Kerala, India**

**4. Vishnulal Murali Mohanlal  
S/o Murli Mohanlal,  
Thettivelil, Kappil Mekku,  
Krishnapuram Post,  
Alappuzha-690533, Kerala**

**...Respondents**

**Present :**

For Appellant : Mr. Bijoy P Pulipra, Advocate

**J U D G M E N T**

**(Physical Mode)**

**[Per: Shreesha Merla, Member (Technical)]**

1) Aggrieved by the Impugned order dated 16-03-2023 in TCP/42/KOB/2019 passed by the National Company Law Tribunal, Kochi Bench, the Petitioner/Mr. Radhakrishnan Babu Nirmala preferred this Appeal under Section 421 of the Companies Act, 2013 (hereinafter referred to as 'Act').

2) By the Impugned Order, the NCLT has dismissed the Petition preferred by the Petitioner/Appellant framing the following issues:

- (i) Whether the enhancement of authorized share capital by resolution dated 31.03.2016 is valid?
- (ii) Whether the Annual General Meeting held on 05.10.2017 is valid?
- (iii) Whether the Form DIR-12 in respect of appointment of 3<sup>rd</sup> and 4<sup>th</sup> respondents is valid?

The Learned Counsel for the Appellant submitted that the 'Tribunal' while passing the Impugned Order has failed to consider the legality of the enhancement of the authorized Share Capital from Rs.1 lakh to Rs.20 lakhs made on 31.03.2016 and the consequent Amendment to the Memorandum of Association (MOA) and arrived at an erroneous conclusion that the same is in compliance with Section 61(1) of the Companies Act, 2013.

- 3) It is submitted that the Tribunal has failed to consider the legality of the Extraordinary General Meeting (EGM) conducted on 31.03.2016 without the approval of the Board of Directors is non-compliance with Clause 43 of the Articles of Association of the 1<sup>st</sup> Respondent Company and arrived at an erroneous conclusion.
- 4) It is also submitted that the Board meeting held on 07.03.2017 was illegal as it is contrary to the declaration, the Annual Returns filed by the Company. It is vehemently argued that the convening of the Extraordinary General Meeting (EGM) and filing of returns with ROC, for enhancing the Authorized Share Capital amounts to fraud within the meaning of Sections 447, 448 and 449 of the Companies Act, 2013. Form SH7 and NGT-14 requirements were not complied with. The allotment of 14,000 equity shares ought to have been declared as null and void. E-Form, PAS No.3 contains the wrong particulars about the name of the Company, the amount of share application money received, shares allotted, names of allottees and their addresses and thereby ought not to have been taken into consideration. The Meeting held on 01.09.2016 is in violation of the Provisions of Section 101 of the Act together with the adjourned AGM 28.09.2017, which was called without the approval of the Board and is therefore non-est due to the violation of Clause-43 of the Articles of Association (AoA). A Single Member does not constitute a quorum which is provided for under Section 97 of the Act and therefore the AGM on 03.10.2017, is non-est. It is argued that the Tribunal has also not considered the legality of INC-22 filed with the Registrar of Companies authorizing the shifting of the Registered Office based on the AGM conducted on 05.10.2007 and failed to note that the actions of the Respondents amount to fraud, within the meaning of Sections 447, 448 and 449 of the Act.

5) It is seen from the record that the Petitioner and the 2<sup>nd</sup> Respondent are the Promoters/shareholders of M/s. Precise Limbus Eye Care Pvt. Ltd./1<sup>st</sup> Respondent Company, which was incorporated for the purpose of running an eye-care Hospital. The Petitioner was taking care of the administration of the Company and the 2<sup>nd</sup> Respondent was handling finance function. Admittedly the Authorized Share Capital of the Company was Rs.1 lakh and it was increased to Rs.20 lakhs and the paid-up capital was also increased from Rs.1 lakh to Rs.15 lakhs on 31.03.2016. It is the case of the Appellant that this increase is illegal and fraudulent and is liable to be set aside.

6) It is the case of the Appellant that the 2<sup>nd</sup> Respondent submitted incomplete forms with the ROC to give an impression that there was a Board Meeting on 07.03.2016 to call and hold an Extraordinary General Meeting (EGM) and a General Meeting on 31.03.2016.

7) It is the case of the Appellant that though the record of the RoC shows that there were several Board meetings held, no such Meeting was ever held. It is also the case of the Appellant that there are only two Directors and two Shareholders and without the presence of the Petitioner/Appellant there was no proper quorum. The Petitioner had received the Notice dated 07.09.2017 for the AGM to be held on 28.09.2017 for adopting the Annual Accounts of the Company for the year ended 31.03.2017, but there was no Board Meeting on 07.09.2017 to approve the Notice of the AGM and hence the Notice is invalid.

8) A perusal of the material on record shows that the Petitioner had sent an e-mail dated 26.09.2017 objecting to the AGM held on 28.09.2017 and on 03.10.2017 the Petitioner/Appellant received a Notice that the AGM would be held on 05.10.2017. Another notice was also received on 07.10.2017 calling for a Board Meeting on 14.10.2017 only to add more number of Members. It is contended that the 2<sup>nd</sup> respondent has filed INC-22 with the Registrar of the Companies, authorizing the shifting of the office from its registered office which is based on the meeting said to be conducted on 05.10.2017, against which act the

Petitioner/Appellant had lodged a Complaint with the Police. On 13.10.2017, the Petitioner received an e-mail informing that due to the administrative reasons, the meeting was postponed to 18.10.2017. It is seen from the record that the Company Petition was filed on 25.10.2017. It is the case of the Petitioner/Appellant that the 2<sup>nd</sup> Respondent had digitally signed and filed the DIR-12 on 04.11.2017 showing that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents were appointed as Directors in the AGM held on 05.10.2017.

9) As regarding the contention of the Learned Counsel for the Appellant that the enhancement of the Authorized Share Capital on 31.03.2016 is illegal, it is seen from the record that the extract of the Resolution Anx.R6 in which the Petitioner and the 2<sup>nd</sup> Respondent had signed, establishes the enhancement of the Authorized Share Capital. The Financial Statements of the Assessment Year of 2015-16, 2016-17 showing the enhanced share capital further substantiates that the enhanced share capital was accepted by the Petitioner as the Anx-4 document shows that these Financial Statements have been duly signed by the Petitioner, the 2<sup>nd</sup> Respondent and the Auditor of the Company. Therefore, this Tribunal agrees with the finding of the NCLT that the enhancement of the Share Capital of the 1<sup>st</sup> Respondent Company, vide a Company Resolution dated 31.03.2016, is valid.

10) A perusal of the material on record shows that there is some strained relationship between the two Directors viz. the Petitioner and the 2<sup>nd</sup> Respondent. A notice dated 07.09.2017 was issued to the Petitioner adhering with the statutory compliances of convening the AGM before 30.09.2017 and the Petitioner/Appellant is informed that the said AGM is scheduled to be held on 28.09.2017. It is not in dispute that the 'Appellant did not attend the meeting held on 28.09.2017 and hence for want of quorum, the AGM was adjourned to the same date in the next week i.e. 05.10.2017 and once again a Notice was sent to the Appellant informing the adjourned date of AGM, vide a letter on 29.09.2017 and also an e-mail on 03.10.2017. Admittedly, on 05.10.2017 the petitioner did not attend the AGM. In compliance

of Section 103(3) of the Act, the AGM was held and the 3<sup>rd</sup> and 4<sup>th</sup> Respondents were appointed as Directors. In this meeting, a Resolution was passed shifting the Registered Office of the 1<sup>st</sup> Respondent Company. A Board Meeting was once again called on 14.10.2017 for approving the Financial Statements and the Directors and Auditor's report. Once again the Appellant did not attend the Board Meeting held on 14.10.2017.

11) The record shows that the Petitioner owns 10% shares and the Minority Shareholder and had not attended the Board Meetings held on 28.09.2017, 05.10.2017 and also on 14.10.2017, despite service of notice, and therefore, now belatedly cannot raise the contention that the induction of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents as Directors, is invalid, filing of the financial statements is non-est and that the very meetings have to be declared as illegal.

For all the aforementioned reasons, we do not find any legality or infirmity in the well-reasoned order of the NCLT, Kochi Bench and therefore this Appeal is dismissed at the threshold. No costs. Any pending IAs stand closed.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

08.08.2023  
SE/TM