

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31st DAY OF JANUARY 2014

PRESENT

THE HON'BLE MR. JUSTICE DILIP B BHOSALE

AND

THE HON'BLE MR. JUSTICE B MANOHAR

COMPA.NO.8/2013

BETWEEN

P GOPINATH
S/O LATE MR P SUBRAMANYAM CHETTY
D.NO.243, GANDHI ROAD
TIRUPATI-517501

... APPELLANT

(BY SRI K G RAGHAVAN, SR. ADV., FOR C K NANDA KUMAR,
ADV.,)

AND

1. BALKRISHNA BREEDING FARMS PVT LTD
HAVING ITS REGISTERED OFFICE AT 377/61
2ND FLOOR, 43RD CROSS, 9TH MAIN
5TH BLOCK, JAYANAGAR, BANGALORE-560041
2. MR P S NANDA KUMAR
S/O LATE MR P SUBRAMANYAM CHETTY
R/A NO.216/32, 39 A CROSS, 5TH BLOCK
JAYANAGAR, BANGALORE-560041
3. MRS P N NIRMALA
W/O MR P S NANDAKUMAR
R/A NO.216/32, 39A CROSS, 5TH BLOCK
JAYANAGAR, BANGALORE-560041

4. MR P NAVEEN KUMAR
S/O MR P S NANDAKUMAR
R/A DOOR NO.1628
16TH MAIN, 2ND PHASE
BANASHANKARI, BANGALORE-560070
 5. MR P NARENDRA KUMAR
S/O MR P S NANDAKUMAR
R/A NO.216/32, 39A CROSS, 5TH BLOCK
JAYANAGAR, BANGALORE-560041
 6. MR P SUDHAKAR
S/O LATE MR P SUBRAMANYAM CHETTY
R/A NO.599, BALAJI COLONY
TIRUPATI-517501
 7. MR C GOPALASWAMY
NO.17, SUMERU, AECS LAYOUT
1ST STAGE, 3RD CROSS
GEDLALABATH
BANGALORE-560024
 8. MR M K DATTARAJ
NO.10, RANGARAO ROAD
BASAVANGUDI
BANGALORE-560004
- ... RESPONDENTS

(BY SRI MURALI ANANTHASIVAM, ADV., FOR J. SAGAR ASSOCIATES FOR R1 TO R5 & R6; R7 & R8 ARE DISPENSED WITH)

THIS COMPANY APPEAL FILED THE ABOVE APPEAL U/S 10F OF THE COMPANIES ACT, 1956, PRAYING TO: A] CALL FOR THE RECORDS OF THE CASE IN COMPANY PETITION NO.64/2013 ON THE FILE OF THE COMPANY LAW BOARD, SOUTHERN REGION BENCH AT CHENNAI, IF NECESSARY, B] SET ASIDE THE IMPUGNED ORDER DATED 25.09.2013 PASSED BY THE COMPANY LAW BOARD, SOUTHERN REGION BENCH AT CHENNAI IN C.P NO.64/2013 AND GRANT INTERIM RELIEFS AS PRAYED FOR IN THE PETITION BEFORE THE

COMPANY LAW BOARD AND ETC.

THIS COMPANY APPEAL COMING ON FOR ADMISSION, THIS DAY, **Dilip B. Bhosale J.** DELIVERED THE FOLLOWING:

PC:

Heard learned counsel for the parties.

2. In this appeal, the appellant has called in question the order dated 26.09.2013 passed by the Company Law Board (for short "the CLB"), Chennai Bench, in Company Petition No.64/2013. The order of the CLB reads thus:

ORDER

"The present Petition is filed by invoking various provisions of the Companies Act, 1956 and Section 59 of the Companies Act, 2013 alleging various acts of oppression and mismanagement in the affairs of the Company and sought various main and interim reliefs. Shri V. Ramakrishna, learned counsel appearing for the Petitioner submitted that the Company issued notice dated 20.09.2013 to hold its 26th AGM on 30.09.2013 at 12.30 P.M. to transact the business as stated in the notice. One of the items is to elect a director in the place of Petitioner who retires by rotation and being eligible for reappointment. The learned counsel submitted that the notice dated 20.09.2013 calling for the AGM was received by the Petitioner on 23.09.2013 and as per the Articles the notice has to be issued for the AGM with clear seven days notice, however, in the present case, the above requirement was not complied with by the Company and therefore the

issue of notice calling the AGM is contrary to the Articles. He further submitted that the Articles were amended by incorporating some changes which are against the interests of the Petitioner. In view of the reason, he requested the Bench to defer the AGM.

2. Shri Anant, learned counsel representing the Respondent's counsel submitted that the Company has fulfilled the condition of seven days notice since the Company has dispatched the notice to the Petitioner on 20.09.2013 and for the purpose of counting the number of days, the date of dispatch is to be taken into consideration and not the date of delivery. In view of the reason, the Company has complied with the statutory obligation in service of notice to the Petitioner and therefore the AGM cannot be deferred. Even otherwise, the AGM is a statutory meeting which has to be conducted and convened before 30.09.2013 failing which the Company will be in default.

3. Heard the learned counsel appeared for the respective parties. The contention of the learned counsel for the Petitioner that the Petitioner received the notice on 23.09.2013 and the said day has to be excluded and also the date of the AGM also to be excluded and therefore the notice was short of seven days is a legal issue to be decided after filing the counter. In view of the reason, I hereby direct the Company not to hold the 26th AGM scheduled to be held on 30.09.2013 at 12.30 P.M. However, the Company is at liberty to hold the 26th AGM after issuing fresh notices to all the shareholders and the members duly complying with the Articles of the Company. The Respondents may file their counter to the interim reliefs within a period of two weeks and serve copies on the other side. The matter is posted on 23.10.2013 at 10.30 A.M."

3. This Court is informed that in view of the order dated 26.09.2013, the Company convened Annual General Body Meeting on 17.10.2013 in which they took certain decisions and by virtue thereof, the appellant ceases to be a Director of the Company. This Court, on 10.10.2013, while issuing notice had made the following observation:

“If any decision in the Annual General Meeting to be held on 17.10.2013, in respect of removal of the appellant as Director, the same shall not be given effect to, till the next date.”

In view thereof, the appellant continues to be a Director of the Company. In this backdrop and having considered the nature of challenge and so also the interim prayer made in Clause No.9.2(i) of the company petition, we made certain suggestions, in the course of hearing, to learned counsel appearing for the parties and they have agreed for the following order:

- i. The statement of Mr.K.G.Raghavan, learned Senior counsel, made on instructions from his client, who is present in the Court, that the

appellant shall file an application within a period of one week from today, challenging the decisions taken in the Meeting held on 17.10.2013, in Company petition No.64/2013 is accepted. If any such application is filed, the CLB shall endeavour to either dispose of the application or at least pass an ad-interim order, without being influenced by this order, on merits in accordance with law pending the hearing and final disposal of the said application.

- ii. The interim protection granted by this court vide order dated 10.10.2013 shall remain operative for a period of four weeks from today.
- iii. It is also open to the appellant to seek interim order in terms of prayer Clause No.9.2(i) of the Company Petition.
- iv. The CLB shall consider the application that will be filed by the appellant, as aforementioned,

and so also the interim prayer (Clause No.9.2(i)) within the time frame.

4. It is made clear that this order is passed without examining merits of the case. All contentions of the parties are kept open. It is further made clear, if, for any reason, it is not possible for the CLB to dispose of the interim application, as aforementioned, within the time stipulated or to pass ad-interim order, it is open to the appellant to seek extension of the interim protection granted by this court vide order dated 10.10.2013 before the CLB.

With these observations, the company appeal is disposed of. Consequently, I.A.1/13 stands disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**