

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.807 OF 2017

Rajeev Anand	..Petitioner
Vs.	
Ramavatar Babulal Jajodia & Ors.	..Respondents

**WITH
ARBITRATION PETITION NO.818 OF 2017**

Rajeev Anand & Ors.	..Petitioners
Vs.	
Ramavatar Babulal Jajodia & Ors.	..Respondents

**WITH
ARBITRATION PETITION NO.803 OF 2018**

Mr.Vinay Bhasin	..Petitioner
Vs.	
Ramavatar Babulal Jajodia & Ors.	..Respondents

Mr.S.U. Kamdar with Mr.Yashesh Kamdar, Ms.Anuja Bhansali, Mr.Pratik Jhaveri i/b. Raval Shah for Petitioner.

Mr.Nitin Thakkar, Senior Advocate, with Mr.Girish Godbole, Ms.Megha Chandre i/b. Ashok Dhanuka and Neha Mhatre for Petitioner in ARBP No.74/18.

Mr.Ashish Kamat i/b. Mr.Anil Mishra for Respondent No.6.

CORAM : G.S. KULKARNI, J.

DATE : 27th FEBRUARY, 2019

P.C.:

Today this petition has been moved on a praecipe dated 22 February 2019 of the Advocates for the petitioners. The contents of the said praecipe are required to be noted which read thus:-

“BE PLEASED TO circulate papers and proceedings in the

aforesaid matter before Hon'ble Mr. Justice G.S. Kulkarni on ____ February 2019 for speaking to minutes of order dated 11th February 2019. By order dated 11th February 2019, this Hon'ble Court had directed the parties to hold a board meeting for appointment of auditor and for fire-fighting purpose. The Petitioners had made a statement that they are not averse to having a board meeting for fire-fighting purpose and appointment of auditor without the presence of the disputing director, Mr.Aakash Jajodia. However, the latter portion of the statement has not been recorded. The Petitioners are in receipt of notice to hold a board meeting on 2nd March 2019 with one of the agendas as to take note of the minutes of the previous meeting of the Board which was not requested for at the time of hearing. Further, the Petitioners also apprehend that the disputing director will attend the meeting and previous board meeting minutes will be sought to be confirmed which are pertaining to confirming the directorship of the disputing director, Mr. Aakash Jajodia. Hence, the urgency.”

2. Mr.Thakkar, learned Senior Counsel for respondent No.1 and Mr.Kamat, learned Counsel for respondent No.6, state that they have not been served with the praecipe and they are not aware about the praecipe except the letter dated 25 February 2019 stating that the petitioner are moving the Court for speaking to the minutes of order dated 11 February 2019. Mr.Kamdar, learned Senior Counsel for the petitioner, fairly submits that copy of the praecipe was not served on the other parties.

3. The application of Mr.Kamdar today is to seek clarification of paragraph 4 of the order dated 11 February 2019 passed by this Court.

The said order needs to be noted which reads thus:-

“1. The above petition under section 34 of the Arbitration and Conciliation Act, 1996 was admitted by this Court by an order dated 7.12.2018. It is stated that pleadings are

complete.

2. Considering the issues involved, learned counsel for the parties are ad-idem that these proceedings would require a final hearing.

3. Accordingly, list this petition on the Final Hearing Board for 12.4.2019.

4. In the meantime, Mr.Kamdar learned senior counsel for the respondents state that his clients are not averse to have a meeting of the board of directors for a decision on fire-fighting devices, and for appointment of an auditor.”

(emphasis supplied)

4. Mr.Kamdar submits that his statement as recorded in paragraph 4 of the above order is not correctly recorded and it ought to have been also recorded that respondent No.6 is not permitted to participate in the board meeting. Mr. Kamdar submits that the board meeting which has been notified on 21 February 2019 and respondent No.6 who is a nominee director cannot participate in the said meeting of the board of directors, by virtue of the award and subject matter of the challenge in the present proceedings. Mr.Kamdar submits that in fact, agenda of the board meeting is also contrary to the statement as made by Mr.Kamdar and as recorded by this Court in paragraph 4 of the above order that the board meeting can be held for a decision on fire fighting devices and for appointment of an auditor.

5. In short, the application of Mr.Kamdar is that the respondent No.6 should not be permitted to participate in the board meeting and that the Court in fact ought to have further recorded in paragraph 4 of the order dated 11 February 2019 in the statement that the board meeting would

be held without participation of respondent No.6.

6. The application of Mr.Kamdar is vehemently opposed on behalf of the respondents by Mr.Nitin Thakkar, learned Senior Counsel and Mr.Kamat. It is contended that the order dated 11 February 2019 was passed in the open Court and was to the knowledge of all the parties of what it contains. It is submitted that today's application is completely an afterthought and in fact an attempt on the part of the petitioners to seek substantial reliefs on a mere praecipe.

7. Prima-facie the contention of Mr.Kamdar, learned Senior Counsel for the petitioners cannot be accepted. This for the reason that the order dated 11 February 2019 was available to all the parties on 13 February 2019. The present application is moved on a praecipe dated 22 February 2019 as noted above. If the petitioners were of the opinion that the statement of Mr.Kamdar was not correctly recorded in paragraph 4 of the order dated 11 February 2019, the petitioners should have immediately approached this Court to point out any deficiency and make such a grievance. In any event the order was passed in the open Court and it was made available to the parties immediately.

8. The grievance of Mr.Kamdar appears to be now something more in as much as the petitioners intend that respondent No.6 should not

participate in the board meeting and more particularly after the agenda of the board meeting is notified on 21 February 2019 which reads thus:-

“Notice is hereby given that the Meeting of the Board of Directors of Aakash Lavlesh Leisure Private Limited will be held at 5.00 P.M. on the 2nd day of March 2019 at the registered office of the Company at Club Millennium, Plot No.1A, Gulmohar Road, Juhu, Mumbai 400049 to transact the following business:

AGENDA

Sr. No.	Agenda Item
1	To grant Leave of Absence to the Director(s), if any.
2	To take note of the minutes of the previous meeting of the Board.
3	To discuss and appoint the Statutory Auditor of the Company.
4	To review, renew and ensure compliances of the fire fighting equipment, fire safety drills and procedures and other safety standards requisite for the safety and operation of Club Millennium and its members.
5	Vote of Thanks

You are requested to make it convenient to attend the Meeting.”

9. Thus it can be seen that except for item Nos.1 and 2 of the agenda, item Nos.3 and 4 are in regard to what the Court recorded in the order dated 11 February 2019 item nos.1 and 2 are not what is observed by the Court in the order dated 11 February 2019. If this be the position, then the meeting is required to be held only in terms of what the Court has observed in the order dated 11 February 2019 and not on any other agenda.

10. In view of the above discussion, no clarification is called for as sought by the petitioners in the praecipe dated 22 February 2019. If the petitioners have any other grievance and intend to seek any further orders, the petitioners are free to do so and for that, the petitioners would be required to move a necessary application which would be decided after hearing all the parties.

11. The praecipe is accordingly disposed of.

[G.S. KULKARNI, J.]