

**COMPANY LAW BOARD**  
**NEW DELHI BENCH**  
**NEW DELHI**

C.P. No. 53(ND)2009-CLB

C.A. No.

Present: SHRI B.S.V. PRAKASH KUMAR,  
MEMBER (JUDICIAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF THE COMPANY  
LAW BOARD ON 02.05.2016 AT 10:30 a.m.

NAME OF THE COMPANY M/s. Data Inforsys Ltd.

SECTION OF THE COMPANIES ACT: 397/398

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Mr. Navendra M Sharma	Advocate	Petitioners	
2.	Mr. Vivek Malik	Advocate	Petitioners	
3.	Ms. SAKSHI MEHLEY, Adv.		Petitioners	
4.	RAMESH SINGH, Adv.		Respondents }	S. Deb Roy
5.	SWARALPI DEB ROY, Adv.			

**Order**

The Petitioners filed a requisition to modify the order dated 04.06.2009 passed by this Bench to permit R1 holding of EGM and to appoint six directors on the petitioners behalf as specified u/s 160 of the Companies Act, 2013; to direct that the voting at the EGM shall be as per the undisputed shareholding position as on before filing of the present CP and R1 Company to comply with consequential formalities including filing of Form DIR-12 post appointment of 6 persons as Directors.



P.T.O.

2. The Petitioners, who filed this CP in the year 2009, stated that P1, P2 & P3 were removed from the Board of Directors on 24.09.2008, 24.09.2008 and 30.01.2009 respectively.
3. There are two issues in this CP – one is, the Respondents illegally acquired voting rights of the Petitioners by allotting 40,000 equity shares with differential voting rights at the ratio of 1:10 thereby reducing the Petitioners to minority; two is, removal of Directors as mentioned above.
4. It is pertinent to note that though an interim order was passed in the main CP in the year 2009, till date, no order has been passed over these two issues, and these Petitioners had never filed any CA seeking appointment of somebody as Directors on the Petitioners' behalf taking the shareholding before creation of differential voting rights into consideration. It is also pertinent to mention that no order has been passed for restoration of these Petitioners as Directors in the Board of Directors.
5. These Petitioners now, after about seven years, filed this CA aforementioned seeking approval of CLB for holding an EGM and for appointment of six directors on their behalf ignoring the differential voting rights continuing all along even after filing this CP.
6. The base for seeking these reliefs is an order this Bench passed on 5.3.2014 in this CP permitting the respondents to hold EGM for change of the name without prejudice to the rights of the Petitioners as well as the Respondents in this CP considering undisputed list of shareholders. Since, this Bench held in the order dated 5.3.2014 to take this undisputed shareholding into consideration for change of name, the Petitioner Counsel now insists upon this Bench to pass an order by applying the same analogy considered in the order dated 5.3.2014.
7. On perusal of the order dated 5.3.2014, it appears that the Respondents have not said anywhere to take undisputed shareholding into consideration for holding EGM for change of name. Moreover, it is not an issue in the order passed on 5.3.2014. It is rather a direction given by the Bench to take the undisputed shareholding into consideration to pass a resolution in that EGM for change of name without prejudice to the rights and contentions of either party. Perhaps, the Ld. Member of Bench-3 had passed that order considering change of name of a company will not have any bearing on the CP when such an order was passed without prejudice to the rights of the parties.



8. Now almost seven years after the present CP was filed, if any order is passed in this CA without adjudicating the differential voting right issue or removal of the Petitioners as Directors from the company which are under consideration in the main CP, it will have direct bearing on the issues in the main Petition and it will make main CP infructuous.
9. Looking at the interim reliefs in this CA for permission to holding EGM and appointment of Directors in the company on the Petitioners' behalf, it is evident that the petitioners could appoint their men as directors only when the respondents side is restrained from exercising their differential voting rights, otherwise the purpose of holding EGM would get defeated. But for having the Petitioners kept quite all along for 7 years though the respondents exercising their voting rights in carrying the functions of the company, especially when the pleadings in the main Petition are complete, it is not proper to undo the present position before main CP is adjudicated.
10. I believe that these petitioners have come up in a circuitous way to overreach the issues in the main CP showing the order dated 5.3.2014 passed by the Ld. Member, Bench-3 as cause of action for filing this CA.
11. The petitioners showed a notice issued by RoC u/s 220 of the Companies Act 1956 as cause of action for approval of CLB to hold EGM by appointing their men as directors, then approve and file balance sheets so as to avoid penal action contemplated u/s 220 of the Companies Act, 1956.
12. To which, the Respondents Counsel submits that the Respondents in all probability might have filed unaudited balance sheet to meet the statutory obligation, if at all unaudited balance sheet is, for any reason, not filed, they will complete the statutory obligations within 15 days hereof.
13. The defense of the Respondents in this CP is, as per family settlement arrived at among the family members, this company has come to the Respondents and some other company has gone to the Petitioners, therefore these Petitioners have no right to interfere with the management of R1 Company, in case the petitioners are permitted to interfere with the management of R1 through this CA, the Respondents would be put to irreparable loss and injury. They submit that this CA is nothing but a device to make main CP infructuous.




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14. The Petitioner Counsel replied to this submission that there is no family settlement; the same is reiterated in the order passed by Honorable High Court of Rajasthan.

15. Since, the said Judgment has not been placed before this Bench by the petitioners; this Bench cannot take a call over the said issue unless this Bench has seen it. Therefore, I have not dealt with this point despite submissions and counter submissions crisscrossed.

16. However, for having these Petitioners waited for more than 7 years without raising this issue before this Bench, I don't find any urgency for moving the application before this Bench by taking the order dated 5.3.2014 and the notice issued by RoC u/s 220 of the Act 1956 into consideration. For an order over the issues in the CA is unwarranted before adjudication of the main petition, this application is hereby posted along with main Petition.

List the main CP along with this CA on 25.7.2016 at 2.30 PM.

  
(B.S.V. PRAKASH KUMAR)  
MEMBER (JUDICIAL)