



NALSAR MEDIATION TOURNAMENT

2019

MEDIATION PROBLEM



MARCH 29-31
NALSAR UNIVERSITY OF LAW
HYDERABAD

A Suitable CEO?

“Problems of high finance and broad fiscal policy which truly are not and cannot be the province of the court for the very simple reason that we lack the necessary expertise and, which, in any case, are none of our business are sought to be transformed into questions involving broad legal principles in order to make them the concern of the court.”¹

Alsatia is the fourth largest country of the world with the third highest population of 1 billion people. The Maya family was the first business family of Alsatia. They were the first to put Alsatia on the world map by making Alsatia a hub of technological innovations. The family was the first to setup domestic owned manufacturing units in Alsatia. It has a long history of industrialization and philanthropy. The founder of the family fortune was Joyee Maya (1919-2001). He joined his father's export trading firm in 1937 and helped in establishing its units in Japan, China, Europe, and the United States. He went on to establish himself as one of the first manufacturers of electric bulbs. His enterprises were noted for efficiency, for improved labour-protection policies, and for the introduction of longer lasting bulbs akin to LED bulbs today. He also introduced the first hydroelectric power plant of Alsatia that became the Maya Power companies after his death.

In the course of his life, Joyee established M/s. SunLight Manufacturing in the year 1974. It was for the first time that a company had set very high standards for worker benefits and welfare - with the facilities such as sanitary hutments and filtered water for workers, then unheard of even in the west.

Joyee Maya was succeeded by his son Kushal Maya who continued to build a technology conglomerate. Kushal too pursued his father's dual aims of creating a business enterprise with sustainable human values, high standards of labour welfare standards, while developing high quality products at affordable prices to bring technology to the common man. Under Kushal's leadership, SunLight Manufacturing became the first company to introduce pioneering labour welfare policy such as medical aid, formation of workers committee, paid leave, worker's provident fund and workmen's accident scheme and ex-gratia payment for road accidents while attending to duty and these policies over a period of time have become law in Alsatia.

Continuing the family tradition, Kushal's brothers and sisters setup various public charitable trusts which now hold a majority of the shareholding of the Maya Conglomerate. Consequently, most of the conglomerate dividends are spent on Alsatia's on social welfare and development.

¹ Justice Chinnappa Reddy in Life Insurance Corporation of India vs. Escorts Ltd. and Ors. SCC 1 (1986) 264

When the Trusts were being set up, the entire Maya family adopted a moto that the following shall form the basis of the operation of the Trusts and any businesses held by the Trusts:

- Maintaining transparency and a high degree of disclosure levels.
- Making a clear distinction between personal convenience and corporate resources.
- Communicating truthfully to the outside world about how the company is run internally.
- Embracing a trusteeship model, with the management as the trustee (and not the owner) of the shareholders' capital.
- Driving the business on the basis of the belief that, 'when in doubt, disclose'

All Maya Conglomerate companies internationally have now adopted this charter as standard operating procedure through board resolutions. As per the Maya family tradition that the CEO retires at the age of 60 after finding a suitable CEO to succeed him.

The conglomerate has various subsidiaries dedicated to various branches of technology such as artificial intelligence, IOT, hardware, software, blockchain, robotics, unmanned vehicles, fibre optics etc. All the subsidiaries are all held by Maya Holding Co. Pvt. Ltd. The ultimate ownership of Maya Holding is with the Maya Trusts.

Keeping in mind Kushal Maya's 59th birthday and the increasing size of the conglomerate, the company officially announced that it is on the lookout for a new CEO for Maya Holding Co. All the brothers and sisters including Kushal Maya are ready to take a backseat and spend their retirement in the hills.

Various key managerial personnel of Maya conglomerate, business leaders of Alsatia were interviewed by the key stakeholders including the Maya brothers and sisters for the job.

The appointment committee finally zeroed down on Varun Sood, the poster boy of the IT revolution. He is forty-five years old, ten years younger than the Vice President, the second in command. He has spent the last 12 years of his career with ZAP, the Swedish global leader in enterprise software.

Varun Sood, who became ZAP's Chief Technology officer in 2007, just 5 years after he joined the company, is credited with helping ZAP take on Oracle on its home ground in the US. Indeed, Varun Sood throughout most of his career and even after joining Infosys has been mostly based in the US Silicon Valley. He was also the chief driver and evangelist of ZAP's secret weapon, GHANA, a rather cool database platform that works within the memory and in its own niche has revolutionised real-time analytics and real-time application development.

Engineers across the world remember attending the ZAP TechEd annual event every year at the ZAP Lab's Whitefield campus in Atimore, Alsatia during Varun Sood's heyday. Some 10,000 engineers gathered to hear him address them -- always by video conference link. He rarely bothered to come to Alsatia even for this annual conference though Atimore, Alsatia

represented the largest of ZAP's overseas R&D labs. Varun Sood's video addresses never lasted for less than an hour and 97% of it was about GHANA.

Kushal Maya was of the opinion that Maya Holding Co. needed new energy, a young blood and dynamic emerging leader for emerging technological changes that keep changing every second. He pitched strongly for appointment of Varun Sood as the next CEO of Maya Holding Co. and persuaded his brothers and sisters to consider him favourably.

At first Varun Sood was not sure and suggested names of few other candidates who would be more suited for the job. But Varun Sood was assured by Kushal Maya that he would be given freehand in running the group and Varun Sood had finally accepted the offer to become the CEO.

On February 15, 2018, Varun Sood was appointed as the CEO of Maya Holding Co. At that time, there were 35 public-listed companies in the Maya Group, with a combined market capitalization of about \$116.41 billion (as on 31 March 2018). Apart from the employment agreement of the CEO, the roles and responsibilities are also captured by the Articles of Association of the Maya Holding Co. under Article 109 in the following terms:

109. ROLES AND RESPONSIBILITIES

109.1 *Reporting Authority*

109.1.1 The CEO shall be employed as the Chief Executive Officer (CEO) and Chief Technical Officer (CTO) of the Company and shall work under the supervision of and report to the Board.

109.2 *General Responsibilities*

109.2.1 The CEO shall be responsible for:

- (a) Leading the development and execution of the Company's long-term strategy with a view to creating shareholder value;*
- (b) Being ultimately responsible for all day-to-day management decisions;*
- (c) Ensuring day-to-day affairs of the Company are run in accordance with Business Plan and Budget and in the interests of the shareholders of the Company collectively so as to maximize the Company's equity value;*
- (d) Implementing the Company's long and short-term plans.*
- (e) Acting as a direct liaison between the Board and management of the Company and communicate to the Board on behalf of management.*
- (f) Communicating on behalf of the Company to shareholders, employees, government authorities, other stakeholders and the public.*
- (g) Ensuring that the Company is appropriately organized and staffed.*

NALSAR MEDIATION TOURNAMENT 2019

For this purpose, the CEO shall have the authority to hire and terminate staff as necessary to enable it to achieve the approved strategy;

- (h) Ensuring that Expenses of the Company are within the authorized annual Budget of the Company;*
- (i) Assessing the principal risks of the Company and to ensure that these risks are being monitored and managed and, mitigate all reasonable and foreseeable Losses;*
- (j) Ensuring effective internal controls and management information systems are in place;*
- (k) Ensuring that the Company has appropriate systems to enable it to conduct its activities both lawfully and ethically;*
- (l) Ensuring that the Company maintains high standards of corporate citizenship and social responsibility wherever it does business;*
- (m) Keeping abreast of all material undertakings and activities of the Company and all material external factors affecting the Company and to ensure that processes and systems are in place to ensure that the CEO and management of the Company are adequately informed;*
- (n) Ensuring that the Directors are properly informed and that sufficient information is provided to the Board to enable the Directors to form appropriate judgments;*
- (o) Ensuring the integrity of all public disclosure made by the Company;*
- (p) Ensuring in concert with the Chairman, to develop Board agendas;*
- (q) Requesting that special meetings of the Board be called when appropriate;*
- (r) Determining the date, time and location of the annual meeting of shareholders and to develop the agenda for the meeting in concert with the Chairman;*
- (s) Advising on combination arrangements such as mergers and acquisitions, joint venture, license agreements, product sales and/or marketing, distribution, combination and/or consolidation;*
- (t) Strategic consulting for growth, facilitating business reorganisations and global resource linkages;*
- (u) Advising on corporate strategy and other advisory related to building shareholder value;*
- (v) Advising on matters related to the Company's management and operation, human resource issues including staffing, capacity building and talent monitoring,*
- (w) Sitting on the committees of the Board where appropriate as*

determined by the Board; and

- (x) *Shall abide by specific internally established control systems and authorities including maintaining confidentiality about financial matters concerning all consulting work of the Company and its subsidiaries, to lead by personal example and encourage all employees to conduct their activities in accordance with all applicable laws and the Company's standards and policies, including its environmental, safety and health policies.*

109.3 Other Responsibilities

109.3.1 Without prejudice to the generality of Clauses 109.2 above, the CEO shall put in place all processes and controls necessary in order to:

- (a) deliver and measure progress against the Business Plan approved by the Board; and*
- (b) provide assurance that the financial results of the Company are reliable and are reported in a timely manner; and the assets and reputation of the Company are safeguarded.*

109.3.2 The CEO shall carry out such further duties as are reasonably required of the CEO's by the Company and in order to effectively perform his duties and obligations.

109.4 Remuneration

109.4.1 The Chief Executing Officer will draw an annual compensation package of USD 10 million with half the amount being in Maya holdings Stock Options.

109.4.2 Severance Pay - In case of premature termination of this agreement the Severance Pay paid to CEO would be an amount equivalent to one year's salary provided the termination is not done due to any breach of duties specified under this agreement. Any termination of this Agreement shall be on the basis of reasonable grounds mutually agreed by the Board and communicated to the CEO.

109.5 Delegation of Responsibilities

109.5.1 The CEO shall have the discretion to appoint a management team for the Company. This management team shall constitute such number of members as approved by the Board. The management team shall report to the CEO.

109.5.2 The CEO may delegate accountability and authority for delivery against the Business Plan as he/she deems appropriate to the management team appointed by him/her for the Company. This shall however, in no way reduce or impact the responsibility and liability of the CEO to the Company and the Board.

109.6 Whole-time Employee

109.6.1 The CEO shall, unless otherwise directed by the Board or prevented by Incapacity, devote the whole of the CEO's working time and attention and abilities to the business of the Company.

Relevant Definitions from Articles of Association of the Company

“Board” means the director of the Company appointed by the shareholders from time to time;

“Company” means Maya Holding Co. Pvt. Ltd.;

“Budget” means the budget for the Company approved or amended from time to time by the shareholders of the Company;

“Business Plan” means the business plan for the Company, prepared annually in respect of the forthcoming five year period setting out details of the Company's strategic planning in respect of customers (including market development and capacity growth), risk assessment and mitigation, expenses, financing, tax, competitors and contingency planning, as approved by the Board and shareholders of the Company;

“Expenses” shall mean the cost that the Company incurs in relation to Business including without limited to preliminary expenses, fixed cost/capital expenditure, working capital requirement, operating expenses, overhead costs, reserves for contingencies and set-off of Losses;

“Incapacity” means sickness or Injury rendering the CEO incapable at performing duties in accordance with the provisions of his Employment Agreement;

Since his retirement, Kushal has taken over work of the family philanthropic Trusts. In April 2018, Article 241 of the articles of association of Maya Holding Co was amended to the effect that, any decisions of the Board of Directors constituting ‘Reserved Matters’ Affirmative Rights would required the affirmative vote of the nominee directors appointed by the family Trusts. Further, no board meeting of the company shall have a valid quorum unless at least one proxy nominated by the family Trusts is present in the board meeting to exercise its voting powers.

The board of directors of Maya Holding Co consists of 6 directors of which 3 are nominees of the family Trust, and 3 are independent directors.

The list of reserved matters is as follows:

SCHEDULE: RESERVED MATTERS OF DIRECTORS (relevant to this problem)

NALSAR MEDIATION TOURNAMENT 2019

1. Change in the number of Directors or the structure of the Board, manner of appointment of Directors, or other change in the organizational structure of the Company;
2. Appointment of any Company, or Officer of the Company;
3. Any entry by the Company into any joint venture, partnership, profit sharing agreement, consolidation, amalgamation, collaboration or any other major project or any Investment in any Person;
4. Exit by any person, Company or Directors from the Investment Company;
5. Appointment of Directors/ Partners/ Officers of the Investment Company;
6. Creation of committee of the Board, its composition and the determination or amendment of any terms of reference of such committee.
7. Approving any Budget, Annual Report, annual accounts or capital expenditure budget or any amendments thereto, and the approval or ratification of any departure from the same;
8. Entering into, modification or termination of any contract, which provides for aggregate payments or consideration payable by the Company in excess of USD 1,00,000;

Since appointment, Varun Sood acted in full swing to bring Maya Co. into the new technology era. He found that the internal enterprise work flow and management software to be outdated resulting in communication mismatch between teams and loss of precious time. He immediately hired ZAP to implement GHANA in all the Maya group companies.

Varun Sood also recommended the acquisition of PayO, an emerging technology enabled payment platform which will be a great asset, considering the digital payment boom that has recently hit Alsatia.

Within six months of his appointment as CEO, various important and old-time employees of Maya in managerial positions sought voluntary retirement. There was hushed gossip about Varun's high handed 'West Coast' attitude. He was said to be a go-getter who did not understand that decisions at Maya were taken with time, consideration and a lot of preparation. He was known to send work related WhatsApp messages to everyone at 5 in the morning and also at 12 in the midnight.

The retired staff was replaced by managers handpicked by Varun Sood. They were all in the age group of 35-45 years all alumni of Alsatia Institute of Technology, which also happened to be Varun Sood's alma mater. The new recruits were offered fat paychecks however Maya

companies pay packages for the average employees had not substantially increased in the last 5 years.

Varun Sood became great friends with Kushal. They regularly called each other to 'exchange office gossip' and discuss any new successes and roadblocks of Maya. Although not a Director on the Board of Directors of Maya Holding, Kushal always wanted information to be shared with him. At the same time he took meticulous care to suggest nearly every time that he was taking an interest purely in his personal capacity and almost always discouraging a reply to his emails giving suggestions.

Varun Sood believes that with time he has won the confidence of the independent directors on the board of the company. But the Trust appointed nominee-directors are a source of concern for him. They slow down the decision making process. At one time, they actually requested for a one-hour break to consult to Kushal, for some advice (and even voted accordingly).

Varun Sood recently appointed independent audit committees for new company acquisitions of Maya Holding Co as he suspects underhand dealings in these transactions. Also he recently cancelled a contract with Grapa Consulting Pvt. Ltd. which kept featuring repeatedly in all the dealings of the Maya Holding.

Since December 2018, Varun Sood started receiving calls from a visibly distressed Kushal, who was giving wide-sweeping suggestions on internal matters. These were such matters that Varun Sood had never even discussed with Kushal. Kushal seems to know exactly what is happening in the company though he regularly tells tabloids how he is enjoying his retirement life. When Varun Sood refused some suggestions of Kushal, he got angry and said that he will never give suggestions even if asked for.

Kushal was very distressed to know that contracts given to Grapa Consulting Pvt. Ltd. are not being honoured. The said company has been giving services to Maya group since their inception. Varun Sood's sweeping attitude is killing the ecosystem that Kushal's forefathers had painstakingly cultivated.

The staff of Maya Holding have recently also issued a representation complaining of the sudden change in office atmosphere and extended work hours. They disliked the CEO walking on the company grass lawn without his shoes. They believed this will dilute the serious work image of the company. The staff is also irked that while they have not had a proper salary hike in so many years, the bare footed CEO has suddenly hired an expensive manager crew for himself. Clearly, there is dissatisfaction brewing amongst the employees. A copy of the representation has also been sent to Kushal and all his brothers and sisters.

In February 2019, at a board meeting of Maya Holding the nominee directors of the Trust moved a resolution for removal of Varun Sood from the post of CEO. The independent directors are not supporting the resolution, this sensitive news made headlines.

While it was clear that Varun Sood had not yet been removed but the story was out that there was trouble brewing. The news flashed in all newspapers across the world. The stocks of various listed Maya companies fell leading to a loss of USD 100 million in a day. Within the next few days, the brand valuation of Maya Holding fell by 20% as people started thinking that the company is not as sustainable in its practices as it claims to be.

On March 01, 2019, an email from Kushal Maya to a former Vice President (Operations) was leaked. The email stated that many of his brothers and sisters had warned him that Varun Sood was fit only to be Chief Technology Officer (CTO) rather than a Chief Executive Officer (CEO).

Since Maya group is one of the major contributors to the GDP of Alsatia, the Government of Alsatia is concerned that any more leakage of information shall lead to grave damage to the economic development of Alsatia which is in a high growth phase. The Prime Minister and various Cabinet Ministers have been speaking to Kushal Maya and Varun Sood to get them to reconcile their differences and settle the dispute without public involvement and away from media scrutiny.

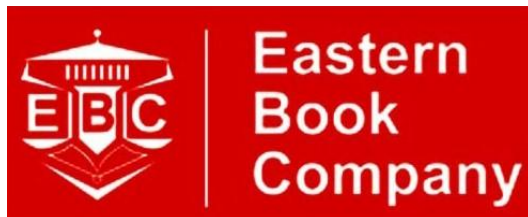
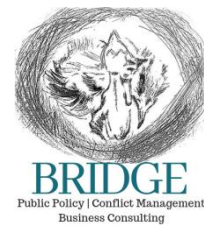
Varun Sood has decided to challenge his removal if the matter reaches that stage. However, presently Varun Sood has filed a request for private, pre-litigation mediation before Centre for Mediation and Conciliation, Bombay Chamber of Commerce and Industry (BCCI), an authorised mediation service provider under Section 12A of Commercial Courts Act, 2015. Kushal Maya has agreed to attend the mediation on behalf of Maya Holding Co. in the capacity of interim CEO of the Company.

The parties have executed the agreement to mediate. Both parties have complete authority to settle the dispute and shall be accompanied by their respective legal counsels. This problem is subject to the laws of India and to be interpreted accordingly. The culture of Alsatia is similar to Indian culture and the context is to be understood accordingly.

NALSAR Mediation Tournament 2019



In Collaboration with



This problem is drafted by Ms. Kritika Krishnamurthy, on behalf of Centre for Mediation and Conciliation, Bombay Chamber of Commerce and Industry, for NALSAR Mediation Tournament 2019.