

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 9 of 2017

IN THE MATTER OF:

Aditya Pratap Singh

... Appellant

Vs.

Vijay Kumar Gupta & Ors

... Respondents

Present: For Appellants:- Mr Krishnendu Dutta, Mr Vivek Malik and Mr Mukul Thakur, Advocates

For Respondent No. 2 and 3:- Mr Naveen Dahiya and Mr Karan Malhotra, Advocates.

ORDER

06.02.2017 — Respondents filed Company Petition No. 120/(ND)/2016 under Section 241 and 242 of the Companies Act, 2013 alleging oppression and mismanagement on the part of the Appellant with the prayer for declaring appointment of Appellant, Respondent No. 5 and 6 (appellants and others) as Directors in the 1st Respondent company.

2. The case of the Respondents was that the 1st Respondent company was incorporated on 30th January, 1995 and the company purchased a land situated at Palwal, Sohna road, village Dhatir, Tehsil Palwal, District Faridabad in the name of 1st Respondent company. The Appellant expressed his desire to acquire 1st Respondent company alongwith the land for a price of Rs.5.75 crores. Eventually the respondents agreed and three post dated cheques were issued which were dated 19.4.2016, 28.4.2016 and 30.4.2016 for a sum of Rs.95,97,000/-, Rs.2,39,51,500 and Rs.2,39,51,500 respectively.

3. The case was taken up with National Company Law Tribunal (hereinafter referred to as 'Tribunal') Principal Bench, New Delhi on 22nd August, 2016 when the Tribunal passed the following order:-

“(a) that status quo with regard to the shareholding pattern of Respondent No. 1 company to be maintained and no Board Meeting or the meeting of the shareholders of Respondent No. 1 company shall be held without prior permission of this Tribunal.

That Respondents No. 2, 4 & 5 of Respondent No. 1 company are restrained from creating any encumbrances on the property belonging to Respondent No. 1 company in any form whatsoever i.e., selling, renting, transferring, alienating or disposing of or creating any third party rights on the assets of Respondent No. 1 company.

The respondents shall not file any form or e-loan any other form on the portal of Registrar of Companies.

3. This consensus order shall operate till the next date of hearing. Ld. Counsel for R2, R4 & R5 shall obtain instructions with regard to payment of the amount of Rs.5.75 crores, along with interest as agreed.”

3. On 30th August, 2016, the Appellant filed an affidavit with an undertaking to pay the Respondent a sum of Rs.5.75 crores with interest with a period from 27.9.2016 to 11.10.2016. In spite of such undertaking given, the Appellant did not pay back the amount to the Respondents. Ultimately when the Appellant informed that they cannot pay back the amount to the Respondents, the Tribunal issued notice of contempt and after hearing the parties, passed the following order :-

“In view of the above we sentence the contemnor Mr. Aditya Pratap Singh and punish him with simple imprisonment for a term of 30 days. The period of 30 days shall commence from 29.12.2016 and this order shall come into effect from the aforesaid date. If in the meanwhile the contemnor Mr Aditya Pratap Singh is able to purge the contempt and make the payment as per the undertaken then the order of sentence shall remain suspended. As the petitioner resides at B-1/304, First Floor, Janakpuri, New Delhi – 110058, a copy of this order be sent to the Superintendent of Police of the area with a direction that Mr Aditya Pratap Singh contemnor residing at B-1/304, First Floor, Janakpuri, New Delhi – 110058 shall be taken into custody and lodge in jail to serve the sentence of 30 days of simple imprisonment.

Interim order to continue.

List the main petition for arguments on 9.2.2017.”

4. This appeal has been preferred by the Appellant against the aforesaid impugned order dated 21st December, 2016 whereby the Tribunal punished the Appellant for simple imprisonment for a term

of 30 days commencing from 29th December, 2016. Notices were issued to the Respondents and the operation of the impugned order was stayed. The Appellate Tribunal allowed the Appellant to file additional affidavit enabling him to purge from contempt. Pursuant to time granted, an affidavit has been filed by the Appellant Mr. Aditya Pratap Singh. He has also filed an affidavit sworn by one Mr Shahid and another by Mr Subhash Chand who are Respondent No. 5 and 6 to the appeal.

5. In the affidavit the Appellant and the Respondent No. 5 & 6 agreed to resign as Director of the 1st Respondent company and thus tendered their resignation which is enclosed along with their affidavits, enclosed as Annexure A1, A2 and A3 respectively.

6. In view of the fact that the Appellant Mr. Aditya Pratap Singh, 5th Respondent Mr Shahid and 6th Respondent Mr Subhash Chand have tendered resignation as directors of the 1st Respondent company, we allow Respondent company to accept the resignation and order that the Appellant Mr Aditya Pratap Singh, 5th Respondent. Mr Shahid and 6th Respondent Mr Subhash Chand be treated to have ceased to be Director (s) of the company. The appellant, 5th Respondent, Mr Shahid, 6th Respondent, Mr Subhash Chand are directed to file their respective declaration under DIR Form 11 before the Registrar of Companies, NCT of Delhi.

7. The 1st Respondent company and its directors will complete the necessary formalities and forward the statutory forms to the Registrar of Companies, NCT of Delhi.

8. So far as Digital Signature of Respondents are concerned, if it is available with the Appellant or 5th Respondent or 6th Respondent, they will return it within 15 days. If they are not available with them, for one or other reason, they will be giving in writing that they will not utilise the Digital Signature in future in any manner or for any purpose.

9. So far as money claim as has been raised by Appellant against the respondents, we do not express opinion regarding their claim but leave the matter to the Appellant and Respondents to decide whether they will prefer any suit if not barred by limitation. We only make it clear that we have not expressed any opinion in regard to money claim and maintainability of suit if preferred by one or other party.

10. In the aforesaid background, this Court accepts unconditional, unqualified apology tendered by the Appellant but imposes a cost of Rs.5 lakhs (Rupees five lakhs only) on Appellant payable to 1st Respondent company within one month.

11. In view of substantive order passed in this appeal, the Respondents are allowed to withdraw the Company Petition No. 120/(ND)/2016. If prayer is made, the Ld. Tribunal will allow the Respondents to withdraw the Company Petition.

The Appeal stands disposed off with aforesaid observation and directions.

Sd/-
(Justice S.J. Mukhopadhaya)
Chairperson

Sd/-
(Mr. Balvinder Singh)
Member (Technical)

RC