

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

(arising out of impugned Order dated 16th December, 2016 passed by NCLT, Allahabad Bench, Allahabad in C.P. No. 131(ND) of 2013 titled as "Shri Rajendra Singh & Ors. Vs M/s. R.R. Sheetgrah Pvt. Ltd & Ors)

Company Appeal (AT) No. 15 of 2017

IN THE MATTER OF:

M/s. Girish Kumar Bansal & Ors ... Appellants

Vs.

**M/s. R.R. Sheetgrah Pvt Ltd.
& Ors. ... Respondents**

Present:

For Appellants - Mr Virender Ganda, Senior Advocate, Mr Rakesh Kumar, Mr Tarun Mehta and Ms Shelly Khanna, Advocates.

For Respondents - Ms. Nalini, Mr Arun Saxena and Ms Jayshree Dugar, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J.

This appeal has been preferred by appellants – who were respondents before the Tribunal - against order dated 16th December, 2016 passed by National Company Law Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as Tribunal) in C.P. No. 131 (ND) of 2013.

2. By the impugned order, the Tribunal allowed the prayer made by the Respondents/petitioners and passed the following order:-

“ 1. That the Petitioner No.1 is declared to be Director of the Company as on and after 18.2.2013;

2. That raising of Authorised Capital of the Company from 30 lacks to 35 lacks and allotting 2,00,000 new shares to Shri Naveen Agarwal – the Respondent No. 3 is declared void and that allotment is hereby cancelled;

3. The company shall hold fresh meetings of Board and General Meeting of Members respectively by issuing notices to all the Directors, including the Petitioner No. 1 and all the members including the Petitioners herein and take decision about increasing of the capital and allot shares according to law following the provisions of Companies Act, 2013 and the Rules there under;

4. Both the parties are at liberty, if they so advised, to seek appropriate reliefs in regard to the enforcement of the agreement between the Petitioner No. 1 and the Respondents in appropriate legal forum.

5. The Petition as far as other reliefs is concerned, be and hereby dismissed.

6. All the pending Company Applications are considered and they are disposed off, and merged with this Order.

7. There shall be no order as to costs.”

3. The Company Petition was filed by Respondents/Petitioners under Section 235, 237, 397, 398, 402, 403 and 406 of the Companies Act, 1956 for the following reliefs:

- (i) Declare Form 5 dated 10.2.2013 increasing the authorised capital of the company from 30 lacks to 35 lacks as null and void and to cancel the same;
- (ii) Declare Form 2 dated 18.2.2013 for the allotment of shares to Respondent No. 3 as null and void and cancel the allotment of 2 lacs shares to the Respondent no. 3;
- (iii) Declare removal of Petitioner No. 1 as director of the company and to further declare Form No. 32 as null and void and to reinstate Petitioner No. 1 on the Board of Directors;
- (iv) To direct investigation against the affairs of the company.
- (v) Direct to initiate criminal proceedings against the Respondent for the acts of fraud committed by them; (others reliefs are not extracted to maintain brevity).

4. The case of the Respondents/Petitioners before the Tribunal was as follows.

The company was promoted by one Mr Rajendra Singh and Mr Ranveer Singh, Respondents/Petitioners. For the purpose of construction and operation of the cold storage and warehouse, the company had obtained credit facilities from Syndicate Bank to an extent of Rs.1.80 crores on hypothecation of the fixed assets of the company besides collateral security provided by Mr Ranveer Singh and his family members. The Bank, however, declared the debt as non-performing asset (NPA) and that forced the Respondents/Petitioners to approach the Appellants for infusing funds on the understanding that they will be made directors and shares of some of the members will be transferred to them. Accordingly, a cluster of 49,400 shares belonging to the Respondents group was transferred to the Appellants in February 2011.

5. The Respondents/Petitioners raised the following contentions before the Tribunal.

6. An agreement was signed between the parties where under the control of the company was given to the Appellants/Respondents. However, subsequently the Appellants/Respondents in order to gain absolute control over the affairs of the company have fabricated 'resignation letter' of Mr Rajendra Singh by means of 'forgery' and removed him from the Board of Directors on 18.2.2013. No notice of the meeting of Board was served on them and that no such meeting was held. It was further alleged by the Respondents/Petitioners that the Appellants/Respondents have also increased the authorised capital of the company from Rs.30 lacs to Rs.35 lacs on 19.2.2013 without sending any notice for the purported EOGM and increased the paid up capital from Rs.13,25,000 to Rs.33,25,000 on 18.2.2013 without sending notice of Board's meeting to the Respondents/Petitioners and they came to know of these transactions from the website of the Ministry of Corporate Affairs with which the Appellants/Respondents have uploaded the statutory forms.

7. The Respondents/Petitioners further contended that this was done to water down their share holding and reduce them to minority. To censure the validity of the allotment of 20 lakh new shares to Mr Naveen Agarwal, there was no proper valuation of the share value and without collecting any premium the shares were allotted to the prejudice of the company. On these grounds, among others, the Respondents/Petitioners have raised the issues of oppression and mismanagement on the following broader aspects:

- I. Illegal removal of Mr. Rajendra Singh from the Board of Directors.
- II. Illegal increase of authorised capital of the company.
- III. Illegal allotment of shares to Mr Naveen Agarwal.
- IV. Non-compliance of the provisions of the Companies Act, 1956, particularly by not sending the notice of the meetings, notwithstanding the fact that the Respondents/Petitioners are majority shareholders by 18.2.2013.

8. In their reply the appellants contended that none of the acts alleged in the petition would amount to oppression and mismanagement prejudicial to the interest of the members of the company though admitting that the bank operations of the company was taken over by Mr Girish Kumar Bansal and Mr Naveen Agarwal in February, 2011. While referring to the circumstances that drew the parties to an understanding, they contended that when the company was in deep financial trouble they were approached by Respondents/Petitioners with a proposal to take over the company by making substantial payment to the bank and this was agreed to by the Appellants/Respondents. Yet Mr Rajendra Singh requested to the Appellants/Respondents to continue him as director and also agreed to continue his personal guarantee to the bank for some time. The value of assets of the company was arrived at Rs.2 crore 65 lacs. It was further agreed that 100% shareholding of the company will be transferred to Mr Girish Kumar Bansal, Mr Naveen Agarwal, Mr Shalabh Bansal and other family members. With that understanding, the Appellants/Respondents agreed to take over the reins of the company with a liability of Rs.257.29 lacs due to the bank and by investing a further amount of Rs.7.71 lacs.

9. Pursuant to that understanding, Mr Girish Kumar Bansal and Mr Naveen Agarwal became directors of the company on 1.2.2011 and 21.2.2011 respectively and copies of Form 32 were also filed with the Ministry of Corporate Affairs. To reflect the above understanding an agreement dated 15.9.2011 and an affidavit dated 28.12.2011 were executed between the two parties.

10. The contention of the Appellants/Respondents was that Mr Rajendra Singh had submitted his resignation and it was accepted by the Board on 18.2.2013 only in pursuance of the above understanding and the Respondents/Petitioners have suppressed these two material documents and therefore rendered themselves disentitled for the equitable reliefs. The Appellants/Respondents illustrated their stand in para I (xi) (d) & (e) of the reply statement displaying certain instances as to how the above agreement was acted upon. One such instance is on 8.2.2011 when four members Mr. Ajeet Singh, Mr. Giriraj Kishore, Mr. Ramesh Chand and Mr.

Ranveer Singh had transferred their shares in favour of Mr Girish Kumar Bansal, Mr Naveen Agarwal, Mr. Shalabh Bansal and in pursuance of it; the total shares thus transferred are 46,400 representing 43.31% transferring remaining 56.69% of the Respondents/Petitioners, but kept the share transfer forms with Mr Rajendra Singh, which is disputed by the other party.

11. The Tribunal framed following questions for determination, :-

- (i) Whether the agreement between the parties was acted upon to any extent?
- (ii) Whether the 1st petitioner had resigned from the Board of Directors on 18.2.2013?
- (iii) Whether there is any illegality in increasing the paid up capital on 18.2.2013 and the allotment of 2 lakh shares to Mr Naveen Agarwal ?
- (iv) Whether the acts complained of amounting to 'oppression and mismanagement' of the company and prejudicial to the interests of the company or/and its members ?

12. The Tribunal on perusal of the records and different decisions of the Apex Court and High Court on the question of oppression and mismanagement held:-

- (a) The agreement between the individual in enforcement of terms of the agreement cannot be subject matter of inquiry in a summary proceeding before the Tribunal. The question relating to intervention, enforcement and the availability of transactions flowing from the terms incorporated in the document are matters to be decided by Civil Court;
- (b) The Appellants/Respondents failed to establish the fact asserted by them that the Respondent 1st petitioner has resigned from the Board of Directors on 18.2.2013 and came to the conclusion that the Respondent 1st Petitioner was not served with notice of the Board's meeting held on 18.2.2013 and there are other doubtful circumstances in the way of believing the premise of resignation;
- (c) Allotment of 2 lakh shares in favour of Mr Naveen Agarwal on 18.2.2013 was beyond authorised capital available with the company on that day and without serving any notice of EoGM to the members, including the petitioners for increasing the authorised capital from Rs.30 lacs to Rs.35 lacs on 19th February 2012 and held the same illegal and contrary to the procedure of law; and
- (d) on the facts of the case, the oppression complained by Respondents/Petitioners at the hands of Appellants/Respondent's group is correct and, thereby, approving the decision taken by

respondents in their Board's meeting and EoGM without notices to directors and members are void.

13. In conclusion, the Tribunal held as follows:-

* In the result of the discussions and observations recorded by us in the above paragraphs of the order, the following conclusions are arrived at.

1. That the agreement and an affidavit dated 15.9.2011 and 28.12.2011 respectively do not divest the interest of the Petitioners' 56.69% of share holding in the capital of the company and, therefore, they are entitled to lay claim for the reliefs under Sections 397 and 398 of the Companies Act, 1956.
2. That the resignation of petitioner No. 1 from the Board of Directors on 18.2.2013 is not established; and therefore, the Petitioner No. 1 shall be deemed to be director of the company on and after 18.2.2013.
3. Increasing the capital and allotment of 2 lakh new shares to Mr Naveen Agarwal – the Respondent No. 3 on 18.2.2013 is illegal as the minutes of the meeting held on that day is vitiated. That allotment is therefore liable to be set aside.
4. The acts of the Respondents in bringing into existence resignation letter of Petitioner No. 1 and fiction of its acceptance in the Board meeting on 18.2.2013 which is vitiated; and increasing the capital and allotment of new shares of Respondent No. 2 on 18.2.2013 is with the calculated motive of reducing the petitioners to minority and to usurp the majority in the management and control of the company, are acts of oppression prejudicial to the interest of the petitioners and the company.”

14. Ld. Counsel appearing on behalf of Appellants submitted that he two documents i.e., Agreement dated 15th September, 2011 and Affidavit dated 28th December, 2011 were material documents to be disclosed by the Respondents/Petitioners as in view of the said documents, the control of the company had been firmly handed over by the Respondents/Petitioners in the hands of Appellants/Respondents. Therefore, the Respondents/Petitioners cannot complain that management and control had been handed over to the Appellants/Respondents. It was submitted that suppression of aforesaid fact being fatal, the Tribunal ought to have dismissed the Company petition on such ground.

Reliance was placed on the Hon'ble Supreme Court decision in Kishore Samrite vs State of U.P & Ors. (2013) 2 SCC wherein the Supreme Court held –

“29. Judicial discipline and propriety are two significant facets of administration of justice. Every court is obliged to adhere to these principles to ensure hierarchical discipline on one hand and proper dispensation of justice on the other. Settled canons of law prescribe adherence to the rule of law with regard to the prescribed procedures. Violation thereof may not always result in invalidation of the judicial action but normally it may cast a shadow of improper exercise of judicial discretion. Where extraordinary jurisdiction like the writ jurisdiction, is very vast in its scope and magnitude, there it imposes a greater

obligation upon the courts to observe due caution while exercising such powers. This is to ensure that the principles of natural justice are not violated and there is no occasion of impertinent exercise of judicial discretion.”

Reliance was also placed on the decision of the Hon’ble Supreme Court in ‘ S.P. Chenglvaraya Naidu (dead) by LRs vs Jagannath (dead) by LRs and Ors. in AIR 1994 SC 853’ wherein the Hon’ble Supreme Court held –

“The courts of law are meant for imparting justice between the parties. One of whom comes to the court, must come with clean hands. We are constrained to say that more often than not process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process as convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

15. It was also contended that the Appellants had spent about Rs.2 crore 65 lacs and an additional Rs.1 crore 75 lacs by paying back liability of the bank as the account of the company became NPA. Personal guarantee given by the Respondents/Petitioners were also released by making such payment and the appellants became the guarantor. Having spent such amount, it was agreed upon by the parties by agreement dated 15th September, 2011 and affidavit dated 28th December, 2011 that the Appellants/Respondents will perform day-to-day function of the company. The Respondents/Petitioners, in lieu of clearing all the due of the company agreed not to interfere with the functioning of the company. It was also contended that both the parties cannot co-exist and therefore, there is no question of co-existence by two groups as ordered by the Tribunal.

16. Ld. Counsel appearing on behalf of the Appellants/Respondents further contended that after the judgement was delivered by the Hon’ble Tribunal and before the filing of the Company Appeal, the Respondents/Petitioners have sold their shares to third parties. It was submitted that if the Respondents/Petitioners intended to sell their shares, they should have offered the same to the Appellants.

17. Ld. Counsel appearing on behalf of the Respondents disputed the stand taken by the Appellants and placed reliance on the decision of the Tribunal.

18. With regard to suppression of material facts, the Tribunal, while dealing with the matter held that non-disclosure of agreement dated 15th September 2011 and affidavit dated 28th December, 2011

are not fatal to the maintainability of the proceeding in terms of equity. The Tribunal also held that the aforesaid agreement dated 15th September 2011 and affidavit dated 28th December, 2011 do not divest the interest of Respondents/Petitioner's of their 56.69 percentage of shareholding in the capital of the company and, therefore, they are entitled to lay claim for relief under section 398 and 398 of the Companies Act, 1956.

19. We have also gone through the records, including the agreement dated 15.9.2011 and the affidavit dated 28.12.2011 original of which are in vernacular Hindi language. The agreement dated 15.9.2011 has been signed by three partners, namely Mr. Girish Kumar Bansal (Appellant), Mr Naveen Agarwal and Mr Rajendra Singh (Respondent). They agreed that the cost of Cold Storage is Rs.2,65,00,000/- and Mr Ranveer Singh and Mr Rakesh Kumar were provided Rs.2,25,000/- each which they had spent towards expenses of the Cold Storage. It was noticed by the Tribunal that approximately Rs.1,65,00,000/- was invested by Mr. Girish Kumar Bansal and Mr Naveen Agarwal out of which they are entitled to get back Rs. 1 crore, and the amount which has been spent towards Cold Storage after settlement of accounts. Further, if there is any difficulty in the running of Cold Storage, Mr Girish Kumar Bansal will take care of it. It was also agreed that about Rs.1,65,00,000/- spent towards Cold Storage will be taken out from the interest derived out of Mr Rajendra Singh's share. Whatever amount had been paid to the farmers out of which after deducting certain percentage, the balance will be invested in the Cold Storage, after adjustment in the Profit & Loss Account, out of the rent derived from Cold Storage, rest will be deposited with the Bank. Mr Rajendra Singh and Mr Balbir Singh will not raise any question about the sum and in case of any further financial requirement, Mr. Girish Kumar Bansal and Mr Naveen Agarwal will arrange Rs.10 lacs or Rs.20 lacs each.

20. In the affidavit dated 28.12.2013 signed by Mr Rajendra Singh and others it was stated that the account in Bank of Baroda, Sadkhad Branch, U.P is in the name of Mr Rajendra Singh shall be deleted. Mr Mr. Girish Kumar Bansal and Mr Naveenji Mathura will have fully right to run the Cold Storage. Mr Rajendra Singh agreed that he will not interfere with the running of R.R. Cold Storage Mr. Rajendra Singh also affirmed that he will not raise any problem with regard to the same issue. Mr Rajendra Singh further agreed that he and his mother will not interfere with the running of the Cold Storage, share of Mr. Girish Kumar Bansal and Mr Naveen Agarwal, whatever the amount invested therein with 1½ % interest will be paid. It was also agreed by Mr Rajendra Singh that the Car expenses of Mr Girish Kumar Bansal, driver's salary, petrol and cost of petrol of Mr Rajendra Singh will be spent out of Cold Storage's account.

Mr Rajendra Singh's family and any of his relatives will not interfere in any financial dealing of the Cold Storage and he will pay Rs. 5 lacs to Mr Girish Bansal by 10.2.2012.

21. The affidavit dated 28.12.2011 also contains three important statements which are:-

- (i) Mr Rajendra Singh for 3 years i.e., upto 31st December 2014 will not draw any amount from the Cold Storage;
- (ii) Mr Rajendra Singh will mark attendance every day in the Cold Storage during the whole year; and
- (iii) At the year end, whatever be the profit & loss, Mr Rajendra Singh will get his share

22. Thus, we find that the agreement dated 15.9.2011 and affidavit dated 28.12.2011 are not fatal to the maintainability of the Company Petition. On the other hand, the Respondent, Mr. Rajendra Singh's affidavit dated 28.12.2011 show that after three years i.e., 31st December, 2014, he stood reverted back to the company and thus he continued to be a shareholder.

The Tribunal rightly held that the Respondents does not cease to be the shareholder of the company.

23. The decisions of Supreme Court, as referred to by the Appellants, are not applicable in the present facts and circumstances of the case.

24. It is not in dispute that the Appellants have spent Rs.2 crore 65 lacs and an additional Rs.1 crore and 75 lacs by paying back liability of the Bank and thereby saved the account of the company from becoming NPA. However, in terms with the agreement and the affidavit, the Appellants are not only entitled to get back the money but also entitled to receive interest from the company of the intervening period. Merely because investment of certain amount in the company it does not clothe the Appellants to oppress or mismanagement of the company.

25. We have noticed that the Respondents/Petitioners in the meantime have sold their shares to third parties. But such shares having been sold after the decision of the Tribunal and before filing of the appeal, the principles of 'lis-pendency' will not be applicable. Therefore, this Court cannot direct the Respondents/Petitioners or the third party to sell their shares to the Appellants.

26. However, as this was not the issue before the Tribunal, instead of expressing any opinion about the transfer of shares in favour of third parties, we give liberty to the aggrieved person,

including the company, to take appropriate step in accordance with law may move before an appropriate forum for appropriate relief.

27. We find no merit in this appeal. It is accordingly dismissed. No cost.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
31st MARCH, 2017

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