

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

Company Appeal (AT) No.178 of 2017

IN THE MATTER OF:

DB(BKC) Realtors Pvt Ltd

...Appellant

Vs

Trinity Capital (Ten) Ltd & Ors.

...Respondent

Present: Mr. Abhinav Vashisth, Sr. Advocate, Mr. Samer V Talwar, Mr. Rajeev Kumar, Mr. Anuj Malhotra Advocates for the appellant. Mr. Darpan Wadhwa, Sr. Advocate with Mr. Manik Dogra, Mr. Sidhartha Das, Ms Astha Nigam Ms Niti Paul Mr. Avbert Senastian, Advocates for the Respondents.

ORDER

29.05.2017- Heard Learned counsel for the appellant and Respondents, who have appeared and filed caveat.

The appeal has been preferred by the appellant against the interim order dated 25th April, 2017 passed by the National Company Law Tribunal (hereinafter referred to as the 'Tribunal'), Mumbai Bench, Mumbai in Company Petition No.148(MAH)/2017. By the impugned order while the Tribunal rejected the application filed by the appellant under Section 8 of Arbitration and Conciliation Act, 1996 with the observations that appellant being a foreign sharehold, in case any application to be filed, it has to be filed under Section 45 of the Arbitration and Conciliation Act, 1996 and not

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under Section 8 of the Arbitration and Conciliations Act and rejected the same application giving liberty to the appellant to proceed as per law.

By the impugned order the Tribunal also decided the application preferred by the respondent/petitioners filed under Section 241 and 242 of the Companies Act, 2013 and observed as follows:

“On the company petition mentioned by the petitioner counsel, the Respondents side counsel has moved section 8 application under Arbitration and Conciliation Act, 1996, for the petitioner being a foreign shareholder, in case any application to be filed, it has be to under Section 45 of the Act, not under Section 8, thereby same is hereby rejected, giving liberty to proceed as per law.

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However, we are of the opinion that that appointment of nominee director being restorative in nature, relegating that relief to adjudication on main hearing, we are of the view that the petitioner for time being is entitled to be protected to the extent of its shareholding and to have access to the records fo the company as any other director gets an access to the records of the company and also over the assets of the company.

Since R1 Company has not yet started raising any structure on the leasehold property taken by the company and having Respondents counsel categorically stated that R1 company has been in the process of getting occupants vacated from the premises, it is to be construed

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that no occasion has yet arisen to create third party rights on the leasehold property acquired by R1 company, whereby this Bench restrains R1 Company from creating any third party rights over its assets for time being from changing the shareholding pattern and directs R1 Company to provide the petitioner access to the financial information like any other director is entitled to.

In the meanwhile, R1 company is hereby directed to file reply within 5 weeks and the petitioner to file rejoinder if any within 2 weeks thereof.

This Bench has rejected the request of R1 Counsel for stay of this order.

List this matter for hearing on 3rd July, 2017.”

From the impugned order we find that the appellant has already been given liberty to proceed as per law. In such case it is open to the appellant to file a fresh application under Section 45 of the Arbitration and Reconciliation Act, 1996 in terms of the liberty given by the Tribunal.

Thus apart from the perusal of the impugned order we find that no ground has been made to interfere with the application and the matter is pending and is likely to be listed on 3rd July, 2017. The parties to cooperate with the Tribunal for early disposal of the petition. We may make it clear that if any fresh application under Section

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45 of the Act is filed, the Tribunal will hear the same at the time of final hearing.

The appeal stands disposed of with the aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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