

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

**Company Appeal (AT) No. 31 of 2016**

**(arising out of Order dated 10<sup>th</sup> November 2016 passed by NCLT, Kolkata Bench in C.A.No. 92/C-I/2016 in C.P.No. 60(ND)/2015).**

**M/s Ranchi Metal & Ispat Pvt. Limited**

**.....Appellants**

**Vs.**

**Surjeet Singh**

**....Respondent**

For Appellant : Ms. Manjulika Pal, S/Shri Akhilesh Shrivastava and Shakeel Md. Akhtar, Advocates

For Respondent : Ms. Mani Gupta, S/Shri Abhishek Tripathi and Rohit Mehra, Advocates

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by the Appellants/Respondent against Order dated 10<sup>th</sup> November 2016 passed by National Company Law Tribunal, Kolkata Bench (hereinafter referred to as the "Tribunal") in C.P. No. 104 of 2014, whereby and whereunder the Tribunal while held oppression and mismanagement by the Appellants, set aside the shareholding as were made in favour of 4<sup>th</sup> appellant. The 1<sup>st</sup> appellant company has been directed to refund the amount to the 4<sup>th</sup> appellant.

2. The Company Petition was filed by respondent/petitioner, Shri Surjeet Singh (hereinafter referred to as Petitioner) under Section 397, 398 of the Companies Act 1956 before the then Company Law Board (hereinafter

referred to as "CLB" for short), alleging oppression and mismanagement by the appellants.

3. The case of the respondent/petitioner before the Tribunal is as follows:

The respondent and the 2nd appellant were employees of one M/s. Usha Martin Limited, dealing with mechanical maintenance, engineering and allied skills. In the year 2013 they came to know that one Mr N.K. Jain who was promoter and subscriber of memorandum was interested in selling his shares of M/s. Ranchi Metal & Ispat Pvt. Ltd. (hereinafter referred to as company). The company is the owner of the plot available in industrial area in Jharkhand. Therefore, the respondent and the 2<sup>nd</sup> appellant entered into discussion with Mr N.K. Jain and other promoters of the company and agreed to purchase their shares. The share transaction was concluded and the respondent and the 2nd appellant became shareholders of the company. The respondent and the 2nd appellant, thereafter planned to start a factory for metallurgical processes particularly in casting of pipes, etc.

4. In order to commence work on the land belonging to the company and for business, the 4<sup>th</sup> appellant provided a sum of Rs.2,01,00,000/- (Rupees two crores one lakh only) to the 1st appellant company. The same was shown as share application money in the Annual Accounts for the financial year ending 31<sup>st</sup> March, 2013.

5. Further, the case of respondent is that along with the 2nd appellant they purchased the shares of one Mr Prince Goyal who was another share holder of the company.



6. The authorised share capital of the company was Rs. 10,00,000/- (Rupees ten lakh only) and the paid up capital was Rs.1,00,000/- (Rupees one lakh only). The respondent and the 2nd appellant held 50% shares each.

7. The respondent purchased 5000 equity shares from Mr Prince Goyal and continued to hold the equity capital of the company. The share transfer was registered on 2<sup>nd</sup> February, 2013. The equity holding which was 50% was brought down and on the date of presentation of the Company Petition, it was 0.24 % of the total shareholding of the company. According to respondent, his share certificates are in the custody of the 2<sup>nd</sup> and 3<sup>rd</sup> appellant. So, he was unable to produce them before the C.L.B. Further case of the respondent was that he as also the 2<sup>nd</sup> and 3<sup>rd</sup> appellants were appointed as director (s) of the company on 1<sup>st</sup> February 2013.

8. The respondent alleged that the relationship between him and the 2nd appellant subsequently became strained. As a result of the same, he received a great shock on perusal of public document available in the website of the Ministry of Corporate Affairs when he learnt that in the meetings of the Board of Directors of the company held on 13<sup>th</sup> January 2014 and on 18<sup>th</sup> February 2014 and in the Extraordinary General Meeting of shareholders of company held on 14<sup>th</sup> February 2014, decisions were taken affecting his right.

9. The respondent subsequently also came to know that 2<sup>nd</sup> and 3<sup>rd</sup> respondents were appointed as additional director (s) of the 4<sup>th</sup> appellant – M/s. Prowess International Private Ltd.

10. The main plea as was taken by the respondent before the Tribunal was that pursuant to meeting of Board of Directors held on 13<sup>th</sup> February 2014 and 18<sup>th</sup> February, 2014 and the Extraordinary General Meeting held on 14<sup>th</sup> February, 2014, his shareholding has been brought down from 50% to 0.24%. It was so brought down by allotting shares in favour of the 4<sup>th</sup> appellant. The grievance of the respondent was that the aforesaid meeting was held without notice and his knowledge.

11. The respondent, thereby, sought a declaration that the Extraordinary General Meeting held on 14<sup>th</sup> February, 2014 was illegal, null and void and any action taken pursuant thereto is non-est in the eyes of law. A mandatory injunction was also sought for to direct the Registrar of Companies, to treat E-form Nos. 2 and 5 filed pursuant to illegal meetings held on 14<sup>th</sup> February, 2014 and 18<sup>th</sup> February 2014 as non-est, illegal and invalid.

12. The case of the appellants is that the 4<sup>th</sup> appellant, M/s Prowess International Pvt. Ltd., paid Rs.2,01,00,000/- (Rupees two crores one lakh only) for the market value of the industrial land owned by the 1st appellant company and controlled by the promoters, Mr Prince Goyal and Mr M.K. Jain. The documentary proofs were placed that 1st payment of Rs. 11,00,000/- was made on 5.5.2012, 2nd payment of Rs.50,00,000/- was made on 11.5.2012 and 3<sup>rd</sup> and 4<sup>th</sup> payments were made on 5.9.2012 and 26.12.2012 for Rs.15,00,000/- and Rs.25,00,000/- respectively. Two other payments were made on 10.7.2012 and 1.10.2012 of Rs.50,00,000/- each.

13. Further case of the appellants is that at no point of time any meeting of company was called for or convened by issuing formal notices and no



attendance sheet were maintained, as the 1<sup>st</sup> appellant company is subsidiary company of the 4<sup>th</sup> respondent in possession of the piece of industrial land without commencement of any business. For that matter meetings of the company were conducted all the time in an informal manner. In support of appellant's contention, they pleaded that the Board meeting held on 25.5.2013 as claimed by the respondent was informal and no notice were issued either by the appellants to the respondent or by respondent to the appellants.

14. The case of the appellant(s) before the Tribunal was that on 1<sup>st</sup> February 2013 all three directors of the of appellant no. 4 i.e., the respondent, 2<sup>nd</sup> appellant and 3<sup>rd</sup> appellant were made directors of the company by original promoters Mr. Prince Goyal and Mr N.K. Jain and shares were transferred in their favour on 2<sup>nd</sup> February, 2013 i.e., one day after their appointment as directors of the company. The payment of Rs. 2,01,00,000/- (Rupees two crores one lakh only) as share money was made by the 4<sup>th</sup> appellant in favour of the company much prior to induction of the respondent in the year 2012.

15. Further case of the appellant(s) was that even no formal meeting was held for converting the share money and application of 4<sup>th</sup> appellant into loan. No such decision could have been taken alone either by the 2<sup>nd</sup> appellant or the respondent without the consent of the 3<sup>rd</sup> appellant who was also the director of the 4<sup>th</sup> appellant company as also of 1<sup>st</sup> appellant company.

16. The appellants also denied that the 2<sup>nd</sup> appellant had any kind of arrangement to acquire shares of the company in his individual capacity nor

that could have been possible in the presence of the 3<sup>rd</sup> appellant as both of them were in the Board of 1<sup>st</sup> appellant and 4<sup>th</sup> appellant companies.

17. Before the Appellate Tribunal the parties have taken similar plea as were taken before the Tribunal.

18. The Tribunal by impugned judgment dated 10<sup>th</sup> November, 2016 noticed the allegations made by the respondent that by resolution dated 13<sup>th</sup> January, 2014, the Board of Directors of the company decided to convene Extraordinary General Meeting for increasing the share capital. It also noticed the allegation made by respondent that the Extraordinary General Meeting was held on 14<sup>th</sup> February, 2014 increasing authorised share capital to Rs.3 crore and the purported Board's meeting held on 18<sup>th</sup> February, 2014, allotting shares in favour of the 3<sup>rd</sup> and 4<sup>th</sup> appellants. Having noticed the same, the Tribunal held that the appellants failed to file any evidence to show that notices were given to the respondent before increasing the authorised share capital and allotment of shares in favour of 4<sup>th</sup> appellant and thereby reduced the shareholding of the respondent from 50 % to 0.24 %. In view of such finding, the Tribunal set aside the allotment of shares as was made in favour of the 4<sup>th</sup> appellant by resolution dated 18<sup>th</sup> February, 2014. The company have been directed to refund the amount to the 4<sup>th</sup> appellant.

19. The appellants have also raised the question of maintainability of the Company Petition at the instance of the respondent as his shareholding was 0.24 % of total shareholding of the company on the date of presentation of the Company Petition. It was contended that the petition under Section 397 and 398 of the Companies Act, 1956 was not maintainable in view of the fact that



the respondents do not satisfy the requirement of Section 399 of the Companies Act, 2013.

20. We have heard Ld. Counsel for the parties and perused the record.

21. In **Anup Kumar Aggarwal Vs. Crystal Thermotech Ltd. & Ors.** — [Company Appeal(AT) No. 17 of 2016], this Court considered the crucial date when an applicant is required to satisfy the requirements under Section 399 of the Companies Act, 2013 so as to make the requirement of having an aggregate of 1/10<sup>th</sup> of share out of the total shareholding of the company, if the appellant alleges oppression in bringing down his shareholding. In the said case, this Court noticed the Hon'ble Supreme Court's decision in **"Bhagwati Developers Private Limited"** and **"Rajahmundry Electric Supply Corporation Ltd.,"** wherein the Apex Court held that **the requirement of 1/10<sup>th</sup> of holding of the total share is to be examined in the light of whether such a number is maintained on the actual date of presentation of the company petition in the court** (emphasis added). This Court while distinguished the decision of Hon'ble Supreme Court in **"Bhagwati Developers Private Limited"** and **"Rajahmundry Electric Supply Corporation Ltd.,"** held that the said principle, which was made applicable in the case of winding up, will not be applicable where applicant alleges oppression and mismanagement in bringing down the shareholding below 1/10<sup>th</sup> of the total share of the company. This Court further observed that if the principles laid down by Supreme Court in **"Bhagwati Developers Private Limited"** and **"Rajahmundry Electric Supply Corporation Ltd.,"** which related to cases of winding up, is made applicable in the case of alleged

'oppression and mismanagement' in bringing down the minimum requirement of shareholding, then the applicant (s) will be remediless. This Court thereby held that the crucial date for determination of requirements under Section 399 will be the date the alleged date of oppression and mismanagement in bringing down the shareholding below 1/10<sup>th</sup> of the total shareholding of the company took place.

22. In view of decision in "Anup Kumar Aggarwal" we hold that the petition preferred by respondent was maintainable.

23. At para 6.4 of the Company Petition, the Respondent (petitioner) pleaded and accepted that in order to commence work on the land belonging to the company and its other business, the 4<sup>th</sup> appellant provided a sum of Rs.2,01,00,000/- (Rupees two cores on lakh only) to the company shown as Share Application Money in the books of accounts of the company. It was also reflected as Share Application Money in the Annual Accounts for the financial year ending 31<sup>st</sup> March, 2013.

24. The appellants denied the statement made by the respondent that he along with the 2<sup>nd</sup> appellant decided to restructure the aforesaid sum of Rs. 2,01,00,000/- (Rupees two cores on lakh only) as loan and returned the same to the 4<sup>th</sup> appellant. There is nothing on record to suggest that the respondent produced any evidence before the Tribunal in support of his claim and he and the 2<sup>nd</sup> appellant decided to restructure the sum of Rs. 2,01,00,000/- (Rupees two cores on lakh only) as the loan or returned the sum to the 4<sup>th</sup> appellant. In fact, the respondent himself has taken and accepted that the 4<sup>th</sup> appellant



provided a sum of Rs. 2,01,00,000/- (Rupees two cores on lakh only) to start the working of the company.

25. The Ld. Tribunal has noticed that no notice was served on the Respondents, and no EGM held to allot shares in favour of the 4<sup>th</sup> Appellant. The respondent had no knowledge, and in the result the share of Respondent/Petitioner had reduced.

26. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 10<sup>th</sup> November 2016. However, in the facts and circumstances of the case, we direct the respondent and the other directors and the company to refund the amount of Rs. 2,01,00,000/- (Rs. Two Crore One Lakh only) with 18% per annum simple interest to the 4<sup>th</sup> appellant within one month. The Registrar of the Companies will ensure such payment.

27. The order passed by Tribunal dated 10<sup>th</sup> November 2016 stands modified to the extent above. The appeal stands disposed of with aforesaid observations.

(Mr. Balvinder Singh)  
Member (Technical)

(Justice S.J. Mukhopadhaya)  
Chairperson

NEW DELHI  
20<sup>th</sup> FEBRUARY, 2017