

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**COMPANY APPELLATE JURISDICTION**

**Company Appeal (AT) No. 175 of 2017**

**(arising out of Order dated 07.04.2017 passed by the National Company Law Tribunal, Kolkata Bench, in C.P. No. 370 of 2010)**

**IN THE MATTER OF:**

**Axis Nirman and Industries Limited & Anr.      ... Appellants**

**Vs**

**M/s. Hotel Birsa (P) Limited & Ors.      ... Respondent**

Present:

For Appellant: - Shri Prateek Khanna, Advocate.

For Respondent: - Shri Abhijeet Sinha, Shri Arijit Mazumdar, Shri Akshay Chandan and Shri Krishanu Ray, Advocates

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

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by Appellants - Axis Nirman and Industries Limited & Anr., against order dated 7<sup>th</sup> April 2017 passed by the National Company Law Tribunal (Kolkata Bench) (hereinafter referred to as Tribunal), whereby and whereunder the Tribunal while deciding Company Petition No. 370 of 2010 preferred by "*M/s. Hotel Birsa (P) Limited & Ors., v. Adbhut Vincom Private Limited*" passed the following order: -

*“The Petition is allowed. It is therefore in the interest of the company and for the existing shareholders of the company that the petitioner was agreeable to sell their shares to Libra, the same be effected. Also the shareholding of the Petitioner shall be reinstated to the amount at which it stood prior to the increase in the authorised capital and the subsequent increase in issued capital. The resolutions as passed in the meetings whereby the increase in the authorised capital, alteration of Memorandum of Association and Articles of Association, appointment of whole-time directors in the meeting and allotment of shares stand cancelled as they were carried out in violation of the Companies Act, 1956. Consequently, the shares of 1,20,000 and 90,000 allotted to R7 and R4 respectively are to be cancelled and the amount paid by them is to be refunded by the R1 company. The Memorandum of Understanding between Libra and the petitioner will be binding on the parties.*

*The petitioner is hereby directed to execute the necessary share transfer forms in favour of Libra Retailer Private Limited as per the Memorandum of Understanding after deducting the amount already paid to the Petitioner by Libra pursuant to the Memorandum of Understanding. Parties are directed to adhere to all other terms as agreed to in the Memorandum of Understanding strictly.”*

2. The impugned order was passed in a petition preferred by the petitioners under Section (s) 397, 398, 111A, 402 and 106 of the Companies Act, 1956 against the Respondents, including Appellants herein, in respect of wrongful acts and suppression and mismanagement by 2<sup>nd</sup> to 7<sup>th</sup> Respondents therein. The 1<sup>st</sup> Appellant was impleaded as 7<sup>th</sup> Respondent.

3. The same very impugned order passed by the Tribunal in C.P. No. 370 of 2010 was challenged before this Appellate Tribunal in “*Adbhut Vincom Pvt. Ltd., v. M/s. Hotel Birsa Pvt. Ltd.*” in C.A (AT) No. 162 of 2017. The 1<sup>st</sup> Appellant - Axis Nirman and Industries Limited was 7<sup>th</sup> Respondent in the said appeal. The aforesaid appeal was also heard on the same date, simultaneously and judgement of both the cases was reserved.

4. In *Adbhut Vincom Pvt. Ltd., v. M/s. Hotel Birsa Pvt. Ltd.*” (supra) this Appellate Tribunal by reasoned judgment dated 11<sup>th</sup> August, 2017 set aside part of the impugned order dated 7<sup>th</sup> April 2017, as quoted below: -

“9. Having heard Ld. Counsel for the parties while we hold that the Tribunal has no jurisdiction to direct sale of shares to an outsider particularly while there are other shareholders, who may agree to purchase the same, a wrong doer also cannot get any relief.

10. For the reason aforesaid, we set aside the last para of the order dated 7<sup>th</sup> April 2017 and as quoted at paragraph 3 above and affirm the rest part of the finding, whereby ‘oppression and mismanagement’ as alleged by the Appellant has been upheld.

11. The appeal is allowed to the extent above. However, in the circumstances of the case, there shall be no order as to cost.”

5. The Appellants having challenged the same very common order, this appeal is also disposed of in terms of judgement and order dated 11<sup>th</sup> August 2017 passed by this Appellate Tribunal in “*Adbhut Vincom Pvt. Ltd., v. M/s. Hotel Birsa Pvt. Ltd.*” The appeal is allowed to the extent above. However, in the facts and circumstances of the case, there shall be no order as to cost.

**(Mr. Balvinder Singh)**  
**Member (Technical)**

**(Justice S.J. Mukhopadhaya)**  
**Chairperson**

**NEW DELHI**

**23<sup>rd</sup> August, 2017**