

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 131 of 2017

IN THE MATTER OF:

Shri Abnash Chander Mahajan & Ors.

...Appellants

Vs.

Vikas Promoters Pvt. Ltd. & Ors.

...Respondents

Present: For Appellants:- Mr. Krishendu Datta and Ms. Prachi Johri, Advocates.

For Respondents:- Mr. Sunil Fernandes, Mr. Siddharth Sharma and Ms. Shruti Arora, Advocates.

ORDER

14.07.2017- The appellants filed Company Petition No. 110 (ND) 2009 under section 397/398 read with Sections 402 and 403 of the Companies Act, 1956. The said petition was disposed of by the erstwhile Company Law Board by order dated 16th January 2014 with the following operative directions:

"1. The allotment of 1,42,200 shares to the respondents is held invalid.

2. Mr. Pankaj Jain, Chartered Accountant, Mobile: 9810286606 is appointed as Auditor-cum-Valuer. I hereby direct the parties to pay remuneration as agreeable to him. The petitioner group and respondents group in proportion to their shareholding shall pay the remuneration to him.

3. This Bench has observed that these Respondents diverted the funds of the company interest free to other companies, and the persons close to them, therefore R 2-5 are directed to pay up the commercial interest accrued upon the loans given to the other companies until the loan amount is paid to the Bank by Respondent No. 1 company, as calculated by the auditor cum valuer appointed in this case. The Auditor, on inspecting the records, will calculate how much fund was given as interest free loan to other companies and others, then R 2-5 shall pay up interest over the said amount until the Bank loan of Respondent No. 1 company cleared.

4. I hereby direct the auditor-cum-valuer to inspect the records of the company to assess as to whether the respondents in the management sold or leased out the assets of the company at undervaluation, if so, calculate the same. I hereby direct R 2-5 to bring back the difference of amount undervalued to the till of the company.

5. I hereby direct the valuer to assess siphoning of the funds of the company by Respondents 2-5 in relation to the transactions and expenditure in development of the project.

8. I hereby direct the valuer to assess the value of the shares of the petitioner as on 31.3.2013 on asset-based valuation taking market value of the assets as on the dates the spaces sold out, as to remaining assets, assess the same as on 31.3.2013 taking the then market rates in the vicinity in to consideration, then provide exit to the petitioners.

9. I hereby direct the valuer to prepare valuation report within three months from the date order is

made available. 10. I hereby direct the respondents 2-5 to pay up the value of the shares of the petitioners in two equal instalments, 1st instalment within 3 months and second instalment within six months from the date valuation report supplied to the parties.

11. I hereby reiterate the order dated December 23, 2011 passed by Honourable High Court of Delhi that the respondents shall not create third party rights over 20% of total saleable assets of Respondent No. 1 company until full payment is made to the shares of the petitioner.

12. The parties are liberty to apply.»

2. In compliance of the order dated 16th January, 2014 passed in the said Company Petition, Auditor-cum-Valuer submitted valuation report on 4th February, 2015. Subsequently, when the matter was taken up, the respondents raised objection regarding the valuation report. By impugned order dated 22nd March, 2017, the National Company Law Tribunal, Principal Bench, New Delhi made following observations and directions:

“16.7. In the background and in view of serious contest on the question of valuation, a strong case has been made out for referring these two issues afresh to another expert, who shall afford opportunity to both the parties to produce documents as required to facilitate valuation. Auditor-cum-Valuer shall consider the relevant sale deeds concerning sale transaction in the vicinity and other cogent documents, if any, produced by the parties and shall comply with the directions of Company Law Board as at Sub-para (4) and (8) of paragraph 55 of the order dated 16.1.2014 passed in

C.P. No. 110/2009. They shall also take into account the circle rate for the area issued by the local revenue authorities for the purpose of paying transfer of property by registered sale deed. The Auditor-cum-Valuer shall prepare valuation report in the light of order dated 16.1.2014 of Company Law Board passed in C.P. No. 110/2009.

18. In view of the aforesaid discussion the following directions are passed:

1. Respondent No. 2 to 5 are directed to deposit Rupees 50,00,000/- (Rupees Fifty lakhs only) with the registry of this Tribunal within one month from the date of receipt of this order which shall remain subject to further order of this Tribunal.

2. The Auditor-cum-Valuer's report dated 4th February, 2015 in respect of quantum of interest receivable on interest free advances, shall be finalized on 27.04.2017 after hearing the parties.

3. Valuer's report on the issue of inflation of the project cost and siphoning off funds by way of bogus advertisement stands finalized.

4. With regard to the issues of siphoning off funds and valuation of shares, parties are directed to come prepared on the next date of hearing to explore the possibility of arriving at a settlement in the matter.

5. In the event settlement is not achieved, parties should come prepared with proposed names of Auditor-cum-Valuer, for appointment of an Auditor-cum-Valuer and for fixation of his remuneration.

6. Parties are also directed to furnish details of all pending Company Applications filed in CP 110/2009 along with

written synopsis to enable their early hearing in terms of direction of Hon'ble High Court of Delhi dated 10.02.2016, except execution application filed by the petitioners to enforce the order dated 16.01.2014."

3. Ld. Counsel appearing on behalf of appellants submitted that the Tribunal without any basis discarded the earlier valuation report and altered the same by directing fresh valuation by Auditor cum Valuer. It is further contended that the valuer estimated the value of the Mall approximately at Rs.111 crores. The Respondents earlier in their affidavit stated that the valuation of the Mall is approximately Rs. 100 Crores. Therefore, there is not much difference in the valuation made by the Valuer and the affidavit filed by the Respondents.

4. Ld. Counsel appearing on behalf of the Respondent objected to the submissions made on behalf of the appellants. It is submitted that the Respondents had made out a strong case to doubt the earlier valuation report and to refer the matter to another expert for valuation. He further submits that the respondents have not filed any affidavit before any court of law showing valuation of amount at Rs.100 Crores.

5. We have heard Ld. Counsel for the appellant and the respondents and perused the record.

6. According to Ld. Counsel for the respondents, the order dated 16th January 2015 passed by the Hon'ble High Court of Delhi is also

not final. However, Ld. Counsel for the respondents accepts that he filed an affidavit before the Debts Recovery Tribunal (DRT) showing the valuation at Rs.100 crores.

7. From the bare perusal of the record, we find that though the Ld. Tribunal observed that a strong case made out for referring the matter to another expert, which is to afford opportunity to the parties to produce documents as required to facilitate valuation, we find that the earlier valuation report dated 4th February 2015 has not been discussed by the Tribunal. In the circumstances, while we are not inclined to interfere with the order by which the Tribunal directed to make fresh valuation report, we are of the view that the Ld. Tribunal while passing order with regard to the valuation of the Mall, will take into consideration the following records:

- a. Valuation report dated 4th February 2015 submitted by the Auditor-cum-Valuer.
- b. Fresh valuation report as may be submitted by the Auditor-cum-Valuer pursuant to impugned order passed by the Tribunal.
- c. Affidavit filed by the respondents before any court of law/Tribunal, including DRT showing the valuation of the Mall in question.

And on considering the aforesaid facts will pass appropriate order with regard to the valuation of the shares hold by the Appellants, and in accordance with law.

8. The parties are directed to cooperate with the Tribunal. We hope and trust that the valuation report will be submitted within a month and Tribunal will be in a position to dispose of the matter within a month thereof. The appeal stands disposed of with aforesaid observation directions. No cost.

(Justice S.J. Mukhopadhyaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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