

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 157 and 158 of 2017

IN THE MATTER OF:

Raaj Bardhan Jayaswal & Ors

.... Appellants

Vs.

Kunal Bardhan Jayaswal

... Respondent

Present: For Appellants: - Mr. Mayank Bose, Mr. Anubhav Kumar and Mr. Anil Kr. Chand, Advocates.

For Respondent: - Mr. Divyan Agarwal, Mr. Ashwin Nayar and Mr. Deepak Khaitan, C.S.

Mr. Salim A. Inamdar, Advocate for Respondent No.2 and 3.

ORDER

02.06.2017- The appellant Raaj Bardhan Jayaswal and Another preferred these appeals against order dated 18th April 2017 and 21st April 2017 passed by National Company Law Tribunal (hereinafter referred to as the Tribunal), Kolkata Bench in C.P.No. 271/KB/2011.

On 15th May 2017, when the Appellate Tribunal issued notice to the respondents, taking into consideration the facts that there is an *inter se*

dispute amongst the family members observed that it will be open to the appellants and the respondents to settle the dispute amicably.

On 19th May 2017, the parties appeared in person and a draft proposal was agreed and recorded. The draft settlement was discussed on 1st June 2017 and today is the date fixed to finalize the settlement.

Today they brought on record the settlement agreement reached and signed by the appellant Mr. Raaj Bardhan Jayaswal on his behalf and on behalf of the company. Respondent Mr. Kunal Bardhan Jayaswal, respondent Ms. Nutan Jayaswal have also signed. Ms. Nutan Jayaswal, wife of the appellant no. 1 has also signed the agreement on behalf of their son Mr. Harsh Bardhan Jayaswal and daughter Ms. Eshaani Jayaswal. This apart, Mr. Siddharth Baardhan Jayaswal, son of Mr. Kunal Bardhan Jayaswal and Ms. Alka Jayaswal wife of Mr. Kunal Bardhan Jayaswal have also signed.

The settlement agreement dated 2nd June 2017 as signed by all the parties reads as follows: -

BEFORE THE NATIONAL LAW COMPANY APPELLATE TRIBUNAL

NEW DELHI

IN THE MATTER OF

COMPANY APPEAL (AT) No. 157 & 158 OF 2017

RAAJ BARDHAN JAYASWAL & ANR.

.....APPELLANTS

VERSUS

KUNAL BARDHAN JAYASWAL & ORS.

.....RESPONDENTS

Settlement Agreement between the Parties mentioned above

1. That abovementioned parties are members of Jayaswal family and had gone into some disputes and filed various cases against each other.
2. That in compliance of the Order passed by this Hon'ble National Company Law Appellate Tribunal on 15.05.2017 and in further compliance of the Order passed by this Hon'ble National Company Law Appellate Tribunal on 19.05.2017 the parties agree to the settlement terms as follows :-
 - (a) Mr.Raaj Bardhan Jayaswal will pay Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs) to Kunal Bardhan Jayaswal as per the following schedule :-

By
will
Raaj Jayaswal

On 2nd June, 2017-----Rs.10,00,000/-

(Rupees Ten Lakhs Only)

On or before 1st September, 2017 --- Rs.60,00,000/-

(Rupees Sixty Lakhs Only)

On or before 1st December, 2017 ----- Rs.100,00,000/-

(Rupees One Crore Only)

Total : Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs)
as full and final payment.

The aforesaid amount of Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs) will be received by Kunal Bardhan Jayaswal on his behalf and on behalf of Alka Jayaswal and Vishaal Jayaswal towards consideration for transfer of shares of his own self and Alka Jayaswal and Vishaal Jayaswal in three companies namely Samar Singh Jayaswal Private Limited, SSJ Investment Private Limited and Bardhan Brothers Private Limited.

- (b) Mr.Raaj Bardhan Jayaswal to pay Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs Only) to Mrs.Nutan Jayaswal as per the following schedule :-

On 2nd June, 2017-----Rs.10,00,000/-

(Rupees Ten Lakhs Only)

On or before 1st September, 2017 --- Rs.40,00,000/-

(Rupees Forty Lakhs Only)

On or before 1st December, 2017 ----- Rs.85,00,000/-

(Rupees Eighty Five Lakhs Only)

Total : Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs Only) as full and final payment.

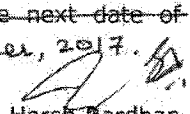
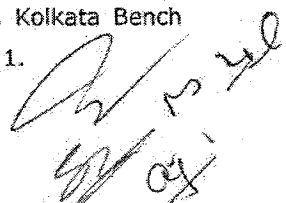
The aforesaid amount of Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs Only) will be received by Nutan Jayaswal on her behalf and on behalf of Harsh Bardhan

 The block contains several handwritten signatures and initials in black ink, including a large signature on the left and a cluster of smaller signatures and initials on the right, some of which appear to be 'Mrs. Nutan Jayaswal'.

Jayawal towards consideration amount for transfer of shares of her own self and Harsh Bardhan Jayaswal in three companies namely Samar Singh Jayaswal Private Limited, SSJ Investment Private Limited and Bardhan Brothers Private Limited.

- (c) Mr.Raaj Bardhan Jayaswal will pay Rs.10,00,000/- (Rupees Ten Lakhs Only) to his daughter Eshaani Jayaswal by way of gift out of his love and affection towards his daughter on or before 1st September, 2017;
- (d) Mr.Raaj Bardhan Jayaswal will pay Rs.10,00,000/- (Rupees Ten Lakhs Only) to his nephew Siddharth Bardhan Jayaswal by way of gift out of his love and affection towards his nephew on or before 1st December, 2017;
- (e) Kunal Bardhan Jayaswal, Alka Jayaswal, Vishaal Jayaswal, Nutan Jayswal, Harsh Bardhan Jayaswal shall execute share transfer forms all their shares of all the three companies as mentioned above in favour of Raaj Bardhan Jayaswal simultaneously at the time of full and final payment on or before 1st December, 2017 before this Hon'ble National Company Law Appellate Tribunal, against the above consideration and ensure that all the above shares shall be transferred in favour of Raaj Bardhan Jayaswal and after execution of the share transfer forms they will not move before any authority or forum to stall the said transfers. The schedule of shareholding is marked as 'Annexure A'.
- (f) Raaj Bardhan Jayaswal will withdraw Title Suit No. 2394 of 2016, which is pending before the Learned 3rd Civil Judge at Alipore, Kolkata and shall apply for withdrawal before the next date of hearing ~~on or before 1st December, 2017~~ *on or before 1st December, 2017* *Alka Jayaswal*
SSJ M
24/10
- (g) Kunal Bardhan Jayaswal will withdraw Revocation Case No. 5 of 2013 which is pending before Ld. 9th Additional Civil Judge at Alipore, South 24 Parganas, and shall apply for withdrawal before the next date of hearing ~~on or before~~ *on or before* *Alka Jayaswal*
SSJ M
24/10

1st December, 2017.

- (h) Raaj Bardhan Jayaswal and Nutan Jayaswal will withdraw all pending proceedings against each other including matrimonial proceedings inter se them and including any appeals arising therefrom and in relation to the Prevention of Domestic Violence Act and / or under any provisions of law. They agree that they will not rely on the ex-parte decree of divorce and will jointly file a petition under Section 13B of the Hindu Marriage Act ~~before the next date of hearing~~ on or before 1st December, 2017. 
- (i) Kunal Bardhan Jayaswal, Nutal Jayaswal and Harsh Bardhan Jayaswal will withdraw C.P. No. 271 of 2011 which is pending before National Company Law Tribunal, Kolkata Bench, after full and final payment as aforesaid and mention before this Hon'ble National Company Law Appellate Tribunal within four weeks of receiving the Order of withdrawal.
- (j) All parties herein also agree that the MOU reached on 6th May, 2015 stands amended to the extent of this present agreement between the parties before Hon'ble National Company Law Appellate Tribunal and accordingly, all monies, rights, title and interests including the following, which have already been transferred to Respondents, in terms of the MoU dated 6th May, 2015 shall not be challenged any further and they shall remain the properties of Respondents herein for all times to come :-
- (i) Two Deeds of Gift made on 12th May, 2015 w.r.t property being 112 Dr. Meghnad Saha Sarani (Southern Avenue), Kolkata - 700 029.
 - (ii) Payment of Rs.15,00,000/- (Rupees Fifteen Lakhs) each made to Respondents No. 1 and 2 herein.
 - (iii) Payment of Rs.15,00,000/- (Rupees Fifteen Lakhs) before National Company Law Tribunal, Kolkata Bench on 2nd January, 2017 to Respondent No. 1. 

(k) The aforesaid agreement reached between the parties shall not come in the way of rights of Harsh Bardhan Jayaswal and Eshaani Jayaswal, both children of Raaj Bardhan Jayaswal and Nutan Jayaswal in so far it relates to inheritance of the properties of their parents.

(l) This agreement has been reached between the parties with their full knowledge and without any pressure.

Place: New Delhi

Date: 02/06/2017

MSD
(2017)

[Signature]
Raaj Bardhan Jayaswal

[Signature]
Kunal Bardhan Jayaswal

[Signature]
Vishaal Bardhan Jayaswal

(Through Kunal Bardhan Jayaswal)

[Signature]
Alka Jayaswal

[Signature]
Siddharth Bardhan Jayaswal

[Signature]
Nutan Jayaswal

For: *[Signature]*
Nutan Jayaswal
Harsh Bardhan Jayaswal

Harsh Bardhan Jayaswal

(Through Nutan Jayaswal)

For: *[Signature]*
Eshaani Jayaswal

Eshaani Jayaswal

(Through Nutan Jayaswal)

Annexure A

Shareholding of Samar Singh Jayaswal Private Limited

| Name of shareholder | No. of Shares |
|--------------------------|---------------|
| Nutan Jayaswal | 800 |
| Harsh Bardhan Jayaswal | 800 |
| Kunal Jayaswal | 4800 |
| Alka Jayaswal | 800 |
| Vishaal Bardhan Jayaswal | 800 |
| TOTAL | 8000 |

S S J Investment Private Limited

| Name of shareholder | No. of Shares |
|--------------------------|---------------|
| Nutan Jayaswal | 200 |
| Harsh Bardhan Jayaswal | 200 |
| Kunal Jayaswal | 900 |
| Alka Jayaswal | 200 |
| Vishaal Bardhan Jayaswal | 200 |
| TOTAL | 1700 |

Bardhan Brothers Private Limited

| Name of shareholder | No. of Shares |
|------------------------|---------------|
| Nutan Jayaswal | 700 |
| Harsh Bardhan Jayaswal | 700 |
| Kunal Jayaswal | 5600 |
| Alka Jayaswal | 700 |
| TOTAL | 7700 |

Br

at 5/11/17 no resp

A separate proposed petition under section 13B of the Hindu Marriage Act 1955 signed by the appellant Mr. Raaj Bardhan Jayaswal and respondent Ms. Nutan Jayaswal, has been filed, as both the parties agree to obtain a divorce by mutual consent from a court of Competent Jurisdiction. Both the parties informed that in the petition under section 13 B of the Hindu Marriage Act, 1955, Ms. Nutan Jayaswal will not claim any alimony separately, in view of the amount she will receive pursuant to settlement agreement on her behalf and on behalf of the son and daughter. The amount which receive on her and on behalf of son and daughter is subject to the rights and claim of Mr. Harsh Bardhan Jayaswal (son) and Ms. Eshaani Jayaswal (daughter), to which they are entitled under Hindu Law or any other law. The terms and conditions of proposed petition under section 13 B is reads as under: -

IN THE COURT OF THE LEARNED DISTRICT JUDGE, ALIPORE

MATRIMONIAL SUIT NO. _____ of 2017

In the matter of :

The Hindu Marriage Act, 1955;

And

In the matter of :

An application under Section 13B
of the Hindu Marriage Act for a
decree for dissolution of marriage
and divorce on mutual consent;

And

In the matter of :

Raaj Bardhan Jayaswal
Son of Late S. S. Jayaswal,
By faith - Hindu,
By occupation - Business,
Resident of "Kona Residency",
Flat No.AG 3, 74/1 Shaikh Para
Lane, Police Station - Shibpur,
Howrah 711102

.....Petitioner
No.1/Husband

- Vs -

Nutan Jayaswal
[Signature]

Nutan Jayaswal,
Wife of Sri Raaj Bardhan
Jayaswal,
Daughter of Chaturbhuj Kapur,
By faith - Hindu,
By occupation - Business,
Residing at 112, Meghnath Saha
Sarani (Southern Avenue), Police
Station - Lake, Kolkata - 700 029.

...Petitioner No. 2 /
Wife

The humble joint petition of the
petitioners Husband and Wife,

MOST RESEPECTFULLY SHEWETH:

1. The instant petition is an application under Section 13B of the Hindu Marriage Act 1955.
2. The parties have been married as husband and wife since 14th October 1979 and had been residing at their matrimonial home at 112, Meghnath Saha Sarani (Southern Avenue), Kolkata - 700 029 since their marriage.

Nutan Jayaswal
[Signature]

3. However, there have arisen issues between the parties to the instant proceedings which have become irreconcilable for which the parties herein have decided to conclude their matrimonial life which is required to be annulled due existence of tremendous stress, misunderstanding, harshness, nepotism, physical dissatisfaction, disbelief and continuous suspicion towards each other which has been growing with every passing day.
4. The aforesaid situation of suspicion and disbelief cannot be and/or could not be resolved inspite of intervention of family and friends for over last several years. The parties herein have been living separately since 2007.
5. The parties have reasons to believe that if and in case their present marriage is not dissolved, the same shall lead to them being subjected to physical and mental ill distress.
6. In the present facts and circumstances, the parties have mutually consented to proceed with the present application before Your Honour without being subjected to any form of coercion, fraud, misrepresentation and/or undue influence by each other and /or any other party.

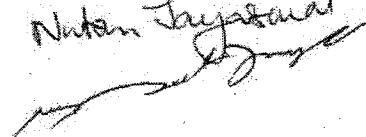
Nutan Jayswal

[Handwritten signature]

7. The Petitioner No. 1 - Mr. Raaj Bardhan Jayaswal in terms of Memorandum of Understanding dated 6th May, 2015 and amended by settlement agreement dated 2nd June 2017 which was duly signed by both the petitioners before the NCLAT at Delhi and the order dated 2nd June 2017 of Hon'ble National Company Law Appellate Tribunal passed in Company Appeals No. 157-58/2017 whereby the petitioners No.1 and No.2 have entered into a comprehensive settlement.


8. Since and subject to Petitioner No. 1 making payments to Petitioner No. 2 in terms of the aforesaid agreement dated 2nd June, 2017 read with the order dated 2nd June, 2017 passed by the Hon'ble NCLAT, Mrs. Nutan Jayaswal - Petitioner No. 2 will not seek and or claim any alimony, maintenance and/ or any other monetary or other benefit whatsoever from Petitioner No. 1 in these proceedings or any other proceedings pending between them.

A copy of the agreement dated 2nd June, 2017 is attached herewith and marked as ANNEXURE P-.

Nutan Jayaswal


A copy of the order dated 2nd June, 2017 passed by Hon'ble NCLAT in Company Appeal No. 157- 158/2017 is attached herewith and marked as ANNEXURE P-


9. The Petitioners state that the Petitioners have no claim or counter claim and/or allegation or counter allegation against each other.
10. The marital relationship by and between the parties have irretrievably broken down and there is no chance of union or reconciliation by and between the parties herein.
11. The cause of action for the instant proceeding has arisen since 2007 at 112, Meghnath Saha Sarani (Southern Avenue), Kolkata - 700 029 and has been continuing on a day to day basis at the said matrimonial home of the Petitioners herein.
12. The suit is valued at Rs. _____ and the ad valorem court thereof has been paid herein and the Petitioners undertake to put in further court fees, if found deficient.
13. This Learned Court has the jurisdiction to try the instant suit as the parties lastly resided together as husband and wife at premises

Nutan Jayswal


No.112, Meghnath Saha Sarani (Southern Avenue), Kolkata - 700
029 within the jurisdiction of this Learned Court.

The instant application is bonafide and made for the ends of justice.

The Petitioners jointly
pray before Your Honour
that the present petition be
allowed under the
provisions of Section 13B
of the Hindu Marriage Act
1955 and the marriage
between the parties herein
be dissolved by a Decree
of Divorce on mutual
consent and the present
application may be made a
part of the consent decree
and to pass such other or
further order/orders as

Nutan Jayswal


Your Honour may deem
fit and proper.


And for this Act of Kindness, Your Petitioners as in duty bound, shall ever
pray.

VERIFICATION

I, Sri Raj Bardhan Jayaswal, Son of Late S. S. Jayaswal, by faith -
Hindu, by occupation - Business, presently residing at Kona Residency,
Flat No. AG3, 74/1 Shaikh Para Lane, Howrah 711102 am the Petitioner
No.1 in the instant case and am well conversant with the facts and
circumstances and the statements made above are all true to my
knowledge and I sign this verification on the day of _____ May, 2017 at
Alipore Judges' Court.

Verification duly signed in my presence

Advocate

Nutan Jayaswal


AFFIDAVIT

I, Sri Raaj Bardhan Jayaswal, Son of Late S. S. Jayaswal, aged about ___ years, by faith - Hindu, by occupation - Business, presently residing at Kona Residency, Flat No. AG3, 74/1 Shaikh Para Lane, Howrah 711102, do hereby solemnly affirm and say as follows:-

1. I am the Petitioner No.1 in the instant case and am well conversant with the facts and circumstances of the case. I am competent to make and affirm the instant affidavit.

2. The statements made in the foregoing paragraphs are true to my knowledge and belief.

Prepared in my Office:

DEPONENT
Advocate

me:

Identified by

Advocate

Nutan Jayaswal
[Signature]

VERIFICATION

I, Smt. Nutan Jayaswal, wife of Sri Raaj Bardhan Jayaswal, daughter of Sri Chaturbhuj Kapur, by faith - Hindu, by occupation - Business, residing at 112, Meghnath Saha Sarani (Southern Avenue), Police Station - Lake, Kolkata - 700 029, am the Petitioner No.2 in the instant case and am well conversant with the facts and circumstances and the statements made above are all true to my knowledge and I sign this verification on the day of _____ May, 2017 at Alipore Judges' Court.


Verification duly signed in my presence

Advocate

AFFIDAVIT

I, Smt. Nutan Jayaswal, wife of Sri Raaj Bardhan Jayaswal, daughter of Sri Chaturbhuj Kapur, aged about _____ years, by faith - Hindu, by occupation - Business, residing at 112, Meghnath Saha Sarani (Southern Avenue), Police Station - Lake, Kolkata - 700 029, do hereby solemnly affirm and say as follows:-

1. I am the Petitioner No.2 in the instant case and am well conversant with the facts and circumstances of the case. I am competent to make and affirm the instant affidavit.

Nutan Jayaswal


2. The statements made in the foregoing paragraphs are true to my knowledge and belief.

Prepared in my Office:

DEPONENT
Advocate

me:

Identified by

Advocate

Nutan Jayaram
[Signature]

We have noticed that the parties have decided to withdraw all the cases preferred by one or other against one or other party to the settlement agreement. If terms of settlement and agreement is not complied with by one or other party, in letter and spirit, it will be treated to be violation of the order of the Appellate Tribunal for the purpose of initiating contempt proceedings.

In view of the aforesaid settlement, we set aside the impugned orders dated 18th April 2017 and 21st April 2017 passed by the Tribunal Kolkata Bench and close the C.P. No. 271/2017 preferred by respondents 1 to 3. The Tribunal, Kolkata Bench will now close the proceedings in view of our order and the settlement reached between the parties.

The terms of settlement as quoted above be treated to be directions of the Appellate Tribunal for compliance by all the parties, who have signed or on whose behalf the agreement has been signed.

The appeals stand disposed of with aforesaid observations and directions. However, in the facts and circumstances, there shall be no order as to cost.

To ensure that the terms of settlement is complied within its letter spirit, the Appellate Tribunal intends to monitor the matter. To report part compliance, post the matter on 1st September 2017 under the Caption "for orders".

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)