

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL (AT) NO.174 OF 2017

(Arising out of order dated 04th April, 2017 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata, in CP No.16/2009)

IN THE MATTER OF:

1. Shri Praveen Kumar Singh,
Son of Shri Rajendra Prasad Singh,
R/o 33/58 B-2,
C-1, Bajrang Nagar Colony,
Chhitupur, Sigra, Varanasi.

2. Shri Lalit Kumar Singh,
Son of Shri Rajendra Prasad Singh,
R/o 33/58 B-2,
C-1, Bajrang Nagar Colony,
Chhitupur, Sigra, Varanasi.

Appellants

Appellant

Vs

1. Medinimata Agro Products Pvt Ltd
Regd Office, Rangamati, P.O. Vidyasagar University
Distt Paschim Medinipur.

2. Shri Sacidanand Ojha
s/o Shri Sitaram Ojha
R/o of Ojha Niwas,
Rangmantt Mednapur, West Bengal

3. Ms Gomti Ojha
w/o Shri Sachidanand Ojha
R/o of Ojha Niwas,
Rangmantt Mednapur, West Bengal

4. Shri Prem Prakash Shukla
Son of Kedar Nath Shukla,
R/o Pratappur, Parsodha,
Narayanpur, Distt. Mirzapur.
5. The Registrar of Companies,
NCT of Delhi & Haryana,
IFCI Tower, 5th floor, Nehru Place,
New Delhi-110019.
6. The Regional Director,
Ministry of Corporate Affairs,
Northern Region,
B-2 Wing, 2nd Floor,
Paryavaran Bhawan,
CGO Complex, New Delhi-110003. Respondents

Present: For Appellants:- Mr. Rakesh Kumar, Mr. P.K. Sachdeva and Mr. Vipin Kumar Yadav.

For Respondent: - Mr. R.D. Vats and Ms Aastha Gupta Advocates for Respondent No.1, 2 and 3.
Mr. Ripu Daman Bhardwaj for ROC.

JUDGEMENT

BALVINDER SINGH, MEMBER (TECHNICAL)

1. This appeal has been preferred by the appellants against order dated 04.04.2017 passed by National Company Law Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as the "Tribunal") in CP No.16/2009 filed under Section 397, 398, 402, 408 read with 111 of the Companies Act, 1956 alleging oppression, mismanagement against the

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respondents and illegal removal of appellants from their directorship from the 1st Respondent Company.

2. The Tribunal vide impugned order dated 4th April, 2017 has concluded as follows:

“Therefore, in the light of the contentions, it is concluded that there is no case of oppression against the petitioners and the company petition deserves to be dismissed. Therefore, the issue No.1 of whether the reduction in the shareholding of the petitioners whereby they signed the share transfer forms and the subsequent resignation of the petitioners from the Board of Directors, prove the existence of the understanding, is decided in affirmative in favour of the Respondents. Furthermore, the issue whether the alleged acts of the Respondents in the present petition constitute oppression against the petitioners, is decided in negative. Therefore, it is concluded that the subsequent acts of the petitioners thereby proved the existence of the understanding between the respondents and the petitioners and furthermore after careful consideration of the facts, contentions and arguments in the present case, the Tribunal is of the opinion that there is no proof of any acts of oppression committed against the petitioners.”

3. The appellant aggrieved by the said order dated 04.04.2017 has filed the present appeal and sought for the following relief inter-alia:

a) Allow the present appeal and set aside the impugned judgement dated 04.04.2017 passed in C.P. No.16/2009 titled as “Shri Praveen Kumar Singh and Anr Vs Mednimata

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Agra Products Pvt Ltd and Ors” filed under Section 397, 398, 402 and 408 read with Section 111 of the Companies Act, 1956 by the Learned National Company Law Tribunal, Kolkata Bench at Kolkata.

- b) Pass such other or further order or orders, in favour of the appellants and against the respondents, which this Hon’ble Appellant Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

4. The brief facts of the case are that the 1st Respondent M/s Medinimata Agro Products Pvt Ltd was incorporated on 10th May, 2006 and its registered office is situated at Paschim Medinipur. The authorized share capital of the 1st Respondent is Rs.1 crore divided into 10 lakh equity shares. Appellant No.1 is an engineer by professional and a social activist who had earlier worked for Gujarat Heavy Chemicals Ltd and started his own business which was a construction firm called M/s Ideal Constructions in 1999 wherein his brother appellant No.2 was helping him. The appellant No.1 also had another company Purvanchal Agro Products Pvt Ltd which was a private company

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incorporation in 2005. 2nd Respondent is a businessman by profession and is a majority shareholder and director in various privately incorporated companies. 4th Respondent is brother in law of 2nd Respondent and was a close friend to appellant No.1 for a long time.

5. It is the case of the appellants that the matter in dispute that the appellant was the successful bidder of the auction unit of the factory unit of one Singh Constructions Pvt Ltd conducted by the UPFC on 23.11.2005. The highest bid offered by the appellant No.1 was of Rs.49 lacs. The said unit was engaged in the business of Rise Bran oil. The appellant No.1 did not have the experience of running the said Unit. The Respondent No.4 who was the common friend of appellant No.1 and brother in law of the Respondent No.2 had introduced Respondent No.2 to appellant No.1. The respondent No.2 had the experience of running the said unit. The understanding was that the said unit would be jointly run by the appellant and the Respondent No.2. The understanding was further arrived that since it was the effort of the appellants' auction unit has come to be acquired, therefore, it's price would be

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ascertained as Rs.75 lacs. The appellants were to get the benefit of Rs.26 lacs as a premium of the said auction unit.

6. It is the case of the appellants that the condition of the said bid was that the auction unit can be vested only in favour of a Corporate entity, in which the highest bidder should have the majority of shareholding. The Respondent No.2 introduced one of his company for having the auction unit in it. The said company was the respondent No.1's company. The Respondent No.1 had also deposited the balance amount of Rs.36 lacs to UPFC, which had been infused by the Respondent No.2 and 3. That as per the understanding, the auction unit was taken into the Respondent No.1 company. The appellants were allotted 52% shareholding in it. Further, the respondents were having 48% of shareholding in it. The appellants were given the benefit of a premium of Rs.26 lacs for acquiring the auction unit by having 52% shareholding in the company.
7. It is further contended by the appellants that in the year 2008, the dispute started between the appellant and the respondent. 2nd respondent was trying to obtain the financial facilities by creating charge over the auction unit, for which appellant

showed their reluctance. The respondents started misbehaving with the appellants. The appellants asked the respondent for their share certificate in 1st respondent company. On non-receipt of the share certificates from the respondent, the appellants lodged the FIR against the respondents and the respondent No.2 also lodged FIR against the appellants. Both appellants and respondents filed the quashing petition before the Allahabad High Court. 2nd respondent also filed civil suit in West Bengal seeking declaration that the appellants have also transferred their shareholding in favour of 2nd respondent. The appellant came to know that the respondents have fraudulently transferred their shareholdings in 1st respondent company in their favour and not only that also, eliminated them from the directorship of the 1st respondent.

8. The appellant further contended that though the respondents had got his signatures on certain blank documents but the appellants have never transferred his shareholding in favour of the 2nd respondent and the appellant had never resigned from the directorship of the 1st respondent company. The appellant further contended that the respondents have

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committed forgery and illegally acquired the shareholdings of the appellants by showing their resignation from the 1st respondent company. The appellants have further contended that they have not received any consideration for the alleged transfer of their 52% shareholdings; have never resigned from the directorship; compliance certificate filed by 1st respondent company for the year 2007 with the ROC did not indicate any transfer of appellants' share in favour of 2nd respondent. The respondents' stand regarding the transfer of the shareholding of the appellants in their favour was entirely different in the civil suit filed before the Medenipur, Civil court. The appellant after acquiring the auction unit with much efforts would never transfer their entire shareholdings only on the meagre amount of Rs.13 lacs which they had paid as earnest money. The director's report file by the respondent itself show that the said auction unit was acquired by them on a very favourable price. The share transfer had taken place on 09.09.2006 and on that day the appellants were on the Board of 1st respondent but no Board Meeting was convened for the transfer of the said shareholding. The alleged transfer was in complete

violation of the provisions of Section 108 of the Companies Act. The transfer of the appellants' shareholdings and their removal from the directorship of 1st respondent was indicated in the Annual Report of 1st Respondent for the year 2006 which was filed in July 2008 with ROC. The further issue of 7 lacs shares which has been shown to be taken place on 12.12.2006, the Form -2 for the said fresh allotment was filed with ROC in the year 2008. The appellant did not receive the consideration for the alleged transfer of shareholding. The respondent did not show even a single document such as Board Minutes, attendance sheet etc to indicate the convening of Board Meeting on 9.9.2006, 12.9.2006 and 12.12.2006. The appellant further submitted that the Article 7 of the Articles of Association of 1st Respondent company mandates that the shareholding of any existing member can be acquired on its fair value and the fair value of their shareholding was much higher on 9.9.2006 whereas the respondents have fraudulently acquired their shareholding on an alleged lesser value.

9. However, it is the case of the respondents that the appellants are no more shareholders of the 1st respondent and therefore the said company appeal is not maintainable.

10. The respondent stated that a rice mill was purchased and the Respondent No.2 and 3 invested huge personal capital in the 1st respondent and also obtained financial accommodation from the West Bengal Financial Corporation. The appellant approached in 2006 to 2nd and 3rd Respondent and requested to invest at least Rs.49 lakhs to purchase an extraction unit from the Uttar Pradesh Financial Corporation to save the investment of the appellants of Rs.13 lakhs from getting forfeited by UPFC. The appellant then induced the respondent to bail them out from forfeiture of their amount of Rs.13 lakhs by UPFC and they were not having enough money to complete the transaction to make payment of balance amount of Rs.36 lakhs. The respondent agreed to bail out the appellants from the threat of forfeiture of a sum of Rs.13 lakhs with the following understanding:

- i) That the plant, machinery and land of the said M/s Singh Extraction Pvt Ltd would be

purchased through the newly formed company, namely 1st respondent.

- ii) Equity shares equivalent to Rs.13 lakhs would be issued in the name of the appellant.
- iii) The appellant herein would get their share capital increased but to the extent as desired by UPFC.
- iv) The appellant would sign a share transfer form in favour of the 2nd respondent so that after the execution of the sale deed by UPFC, the appellant could be removed from the company after paying off their investment of Rs.13 lakhs. Up to the execution of sale deed, the appellants would be shown as the director of the company. The appellant agreed to sign duly resignation letter which would be effect upon making payment of sum of Rs.13 lakhs.

On the above clear understanding the respondent infused the amount in the company and then UPFC agreed to execute sale deed. Thereafter the 2nd and 3rd respondent further

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infused Rs.9 lakhs in the company, as a sum of Rs.410111/- had been paid to UPFC on account of interest and also charges expenditure incurred in registration of the sale deed. Thereafter the 2nd and 3rd respondent and the appellant became the shareholder on 21.9.2006 in the manner

2nd Respondent = Rs.10 lakh

3rd respondent = Rs.2 lakh

Appellant - Rs.1,30,000/-

11. That on 12th September, 2006 the appellants were shown as having resigned from the Board of Directors of the company. Thereafter the 2nd respondent duly lodged the executed share transfer form of the appellants for registration of those shares in their name in the Company. After receiving the amount, the appellant refused to hand over physical possession of the said plant, machinery and land of the said M/s Singh Extraction Pvt Ltd taking advantage of the local ground situation prevailing at Mirzapore. The appellant prevented the respondent, who belong to West Bengal, to take possession of the land, plant and machinery. Thereafter the

appellant started blackmailing the respondent and demanded huge money. The appellant continued with their obstructive attitude and proceeded to file false criminal complaints one after the other against the respondent on the alleged ground that they had invested Rs.40 lakhs in the company which was not the case. On seeing the negative attitude of the appellant, the respondent filed a civil suit in West Bengal that the purchase of the entire shares of the petitioner in the company by the 2nd Respondent is legal, valid and consideration and also illegal notice dated 29.7.2008 was issued by the appellant. The appellant never participated in the management of the company since 12.9.2006. They never made any complaint regarding non participation in the management.

12. Vide order dated 12.07.2017 this Appellate Tribunal has

held as under:

“Respondents are allowed a week’s time to file reply and state whether the appellants/petitioners had 52% shareholding and their shares were transferred on payment of consideration amount or not. If the appellants/petitioners had 52% equity shareholding and their shares were transferred in 2006 and reflected in Annual Return of 2007, then the respondents will give details of the instruments(s) through which the

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consideration amount was paid to the appellants/petitioner.”

13. On 17.8.2017 both the parties made a statement before this Appellate Tribunal that the settlement process is going on between the parties and on their request the case was adjourned the time was allowed to the parties to settle the matter failing which the Appellate Tribunal may decide the case on merit.

14. Further vide order dated 08.09.2017 this Appellate Tribunal had directed the parties that *“As a last chance parties are allowed a week’s time to settle the matter, failing which the Appellate Tribunal will decide the case on merits.”*

At last on 5.10.2007 the arguments of the parties were heard and the judgement was reserved.

15. In compliance with our order, the respondent in a written reply had submitted the papers wherein respondent has paid off the sum of Rs.13 lakhs which was the investment made by the petitioner by account payee cheques which were duly encashed by the appellants without raising any objection in the following manner:

Bank & Cheque No.	Dt.	Amount
Praveen Singh Axis Bank 504	08.09.2006	Rs.10 lakh

Lalit Singh Axis Bank 505 08.09.2006 Rs.3 lakh

16. In the light of the above submissions made by the respondent that the payment has been made and the instrument for transfer of shares having been signed by the appellant, it is only a matter of time when the shares will be transferred from the appellant to the respondent and once the shares have been transferred and have been shown as transferred, the appellant shall not be a shareholder of the 1st respondent. As soon as the appellant is no more/longer a shareholder of the 1st respondent, or the appellant is not shareholder of the 1st respondent on the date of filing of the petition, no petition is maintainable under Section 397, 398 of the Companies Act, 1956 read with Section 241 of the Companies Act, 2013.
17. It is observed that the appeal of the appellant is not maintainable in as much as the appellants have not come to Hon'ble Court with clean hands. The appellants have no right to file the appeal as the appellant was not holding any shares at the time of filing of appeal. The claim of the

appellant is based on oral assertions, which is devoid of any force and is inadmissible in evidence. The tribunal held:

xxxx "The claims that the petitioners have made regarding the signatures, on the share transfer forms and the resignation letters being forged, merit scarce attention; as the claims have not been substantiated with any pieces of proof because the burden of proof relating to the proving or disproving the aforementioned signatures is on the party who claims forgery. Regarding the exclusion of oral evidence in presence of documentary evidence relating to the same, Section 91 of the Indian Evidence Act, 1872 contemplates evidence of terms of contracts, grants and other dispositions of property reduced to form of documents which lays down that when the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Section 92 of the Indian Evidence Act, 1872 excludes evidence of any oral agreement or statement, when the terms of a contract, grant or disposition of property or any matter required by law to be in writing have been proved as per Section 91 of the Indian Evidence Act, 1872 for the purpose of contradicting, varying, adding to or subtracting from its terms. The principle lays down that when the terms of any such document have been proved by the primary or secondary evidence of the document, no evidence of any oral agreement or statement shall be admitted. Also Section 94 of the Indian Evidence Act, 1872, deals with the exclusion of evidence against

application of document of existing facts. This section applies when the execution of the document has been admitted and no vitiating fact has been proved against it. XXXX

18. It has further been noted that participation of the appellant in the auction of UPFC which was held on 23.11.2005 wherein the appellant appeared to be the highest bidder by depositing Rs. 13 lacs and further in order to comply with the requirement of UPFC for execution of sale deed also formed a company in the name of Purvanchal Kisan Agro Pvt. Ltd. on 17.01.2006. The appellant then approached the respondents for purchasing the auction property and the whole proceeds appear to be an arrangement between the appellants and respondents. The tribunal held that:

XXXX *“Out of the amount of Rs.38 lakhs, which the petitioners claim to have invested, the Rs.12 lakhs that was allegedly lent by the Petitioners to the company has no receipt against it, and therefore, the veracity of this payment cannot be asserted. The amount of Rs.13 lakhs allegedly paid by the petitioners in consideration of the share capital allotted to them in the Company whereby they held Rs.13 lakhs is also found to be false, because of the apparent contradiction in the statements in the petition and the rejoinder of the petitioners, whereby the petitioner has contended in the petition that consequent to the terms of arrangement and understanding, Rs.25 lakhs was paid while Rs.13 lakhs was retained for the 52% equity shareholding, and in the rejoinder have contended that Rs.13 lakhs, that the petitioners invested as a consideration in lieu of the share capital that they held in the company, has never been paid back by the*

Respondents. However, the petitioners contend that the remaining Rs.13 lakhs that was paid to UPFC as earnest money by the petitioners, has been paid off by the Respondents through account payee cheques which have also been produced for proof. The subsequent acts of the petitioner of resigning from directorship on 12th November, 2006, and selling their shares that they held of the company through share transfer forms on 9th September, 2006, prove the existence of the understanding that the respondents have claimed to have entered with the Petitioners at the inception.”

- 19.** In view of the above observations, we are not inclined to interfere with the impugned order. The appeal is dismissed accordingly. No order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

(Mr. Balvinder Singh)
Member(Technical)

Dated: 14 -11-2017
New Delhi

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