

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) NO. 01 OF 2019

In the matter of:

- 1. Bridge E-Solutions Pvt Ltd
12 Old Vijay Nagar Colony,
Agra U.P. 282004**
- 2. Rajendra Kumar Gupta,
12 Old Vijay Nagar Colony,
Agra, UP 282004**
- 3. Varun Gupta,
12 Old Vijay Nagar Colony,
Agra, UP 282004**
- 4. Dipayan Chandra Sarkar
5 Cardinal Dr. Princeton JCT
New Jersey USA 08850**

Appellants

Vs

**Bridge Solutions Group Inc
1 Bridge Plaza North, Suit 180
Fort Lee, New Jersey, USA 07024**

Respondent

Mr Pankaj Jain, Advocate for appellant.

Mr. Ashim Sood, Mr Rhythm B, Mr. Aditya Kumar, Advocates for Respondent.

**JUDGEMENT
(20th January, 2020)**

Justice Jarat Kumar Jain, Member (Judicial)

The appellants (Respondent in CP No.36/ND/2015) preferred this appeal against the judgement dated 20.09.2018 passed by the National Company Law Tribunal, Allahabad Bench, Allahabad. The Respondent Company (petitioner in CP No.36/ND/2015) had filed the petition before

erstwhile Company Law Board, New Delhi Bench under Sections 397, 398, 402, 403 and 406 of Companies Act, 1956 and after creation of NCLT the petition has been transferred to NCLT Allahabad.

2. The appellant No.1 company was incorporated under the Companies Act, 1956 on 24.8.1997 as name of R.K. Chains Pvt Ltd. The name of the company was changed to MIT e-solutions Pvt Ltd on 22.8.2008, further renamed to Bridge e-Solution Pvt Ltd on 21.2.2011 having its registered office at 12 Old Vijay Nagar Nagar Colony, Agra UP 282004. The authorized and paid up share capital of the appellant company was Rs. 5 lakhs consisting of 50000 equity shares of Rs.10/- each. Subsequently share capital was increased to Rs. 40 lakhs of 400000 equity shares of Rs.10 each. The increase in share capital is in dispute. The main object of the appellant company is to carry on the business of Business Process Outsourcing, Knowledge process outsourcing, call centre, software development, legal process outsourcing, E-learning, Networking, E-tuition, Data-administrator etc. The appellant No.2 w.e.f. 24.8.1997, appellant No.3 w.e.f. 1.1.2012, appellant No.4 w.e.f. 1.1.2012 are the directors of appellant No.1 company.

3. The Respondent company was incorporated under the laws of the State of New Jersey, USA and having its registered office at 1 Bridge Plaza North, Suite No.180, Fort Lee, New Jersey, USA 07024. The Respondent company is legal an beneficial owner of 25500 equity shares of appellant No.1 company representing 51% of share capital. Appellant No.2 having 500 shares, (1%), Appellant No.3 12000 shares (24%), appellant No.4 having 12000 shares (24%). It was agreed between the Respondent and appellant that the

Respondent would be given majority shareholding in the appellant No.1 company for its investment whereas appellant No.2 to 4 being well aware of the Indian laws and having necessary managerial skills would manage the affairs and compliance of the appellant No.1

4. The Respondent filed the petition against the appellants under Section 397, 398, 402, 403 and 406 of the Companies Act, 1956 alleging that without knowledge and consent of Respondent, appellant No.2 to 4 increased authorised capital from Rs.5 lakhs to Rs.40 lakhs without following due procedure and due notice to the Respondent and appellant No.2 to 4 have not subscribed any money after increasing share capital. However, they diluted the shareholding of the Respondent company from 51% to 47%. It is also alleged that appellant No.2 employed his wife Smt Shasi Gupta without the consent of Respondent Company, her name is not shown in the list of employees of the company and the amount of Rs.322220/- is disbursed to her as salary. Thus the act of the appellant No.2 to 4 is of oppression and mismanagement towards the company

5. Appellants denied all the allegations and submitted that Respondent has stopped paying expenses and invoices of the appellant company from September, 2013 onwards though contractually agreed as a result the company was unable to pay expenses and taxes and suffered huge losses. In this situation clear notice of 21 days for EGM has been sent to Respondent company through courier service. Thereafter on 22.9.2013 a resolution was passed for increasing the share capital. For the same prescribed procedure as per Companies Act, 1956 has been followed. Respondent company has also

subscribed the increase capital and has paid 30000 USD amounting to Rs.1626900/-. Thus 162690 shares were allotted to Respondent company, 7310 shares to appellant No.2 and 90000 shares each to appellant No.3 and 4. As per the Articles of Association of the Company the directors are empowered to appoint any person for company and the consent of Respondent is not required. However, Smt Shashi Gupta wife of appellant No.2 was appointed to manage the affairs of the company. The salary paid to her shown in the account books and TDS was also deducted from her salary. Thus there is no case made out for oppression and mismanagement.

6. After considering the submissions and documents on record NCLT held that the share capital of appellant No.1 company was increased without establishing the need for capital and without following procedure and obtaining approval/consent of major shareholders and even without infusing the funds by the appellants herein. Dilution of shareholding of Respondent herein is illegal and oppressive act and there is financial mismanagement and siphoning of the funds from the appellant company. It is also held that the relationship between the shareholders as irretrievably broken down and there is stalemate in the operations and business of the company. Hence allowed the petition of respondent with a direction that the Resolution dated 27.9.2013 in regard to increase of authorised capital is illegal and void. It is also directed that there are instances regarding manipulation of annual financial statements and siphoning of funds from the appellant company. Therefore, it is appropriate to appoint an independent auditor who can perform audit of financial mismanagement and siphoning of funds and after

this exercise independent valuer be appointed for valuation of main business of the appellant company.

7. Being aggrieved with this order the appellants have filed this appeal.

8. Learned counsel for the appellants submit that there was urgent need to meet out paying the expenses and taxes, as the Respondent company stopped paying expenses and invoices of the appellant company from September, 2013 onwards. Hence appellant company has increased the share capital after notice to the Respondents and following due procedure. The Respondent has also subscribed for the increased share capital.

9. Learned counsel for the Respondent supports the impugned order and submits that the appellants have without the notice and consent increased the share capital. It is also submitted that the Respondent has never subscribed for the increased share capital. The amount of 30000USD i.e. Rs.1626900/- was credited to the appellant company against invoices and expenses.

10. In this regard NCLT on the basis of Appellant Company's bank statement of HDFC Bank, copy of which filed by the Respondent for the financial year 2013-14 held that on 30.4.2013, 3.6.2013, 2.7.2013, 3.7.2013, 2.8.2013, 4.9.2013, 6.9.2013 and 30.9.2013 the amount was credited by the Respondent company. It shows that the Respondent company has frequently sent funds to the appellant company.

11. The appellants have not filed any documents to show that this finding is incorrect or erroneous conclusion has been drawn by the NCLT. Thus the

plea of the appellants that the Respondent company stopped paying expenses/invoices of the appellant company from September, 2013 onwards, therefore, the appellant company has to increase share capital from Rs. 5 lakh to Rs.40 lakh, is not correct.

12. As per the appellant they have sent the clear 21 days notice of EGM dated 27.9.2013 by courier. In regard to proof of service they have filed the receipt of courier which is illegible. The appellants have not filed any acknowledgement of notice by Respondent Company. Surprisingly the appellants have not sent the notice of EGM dated 27.9.2013 through email to the Respondent. However, during the period the companies have exchanged letters through email.

13. We have also perused the resolution dated 27.9.2013. In this Resolution the need of increasing share capital is not mentioned. Appellants have not placed on record any document to show that the copy of resolution has been sent to Respondent company.

14. With the above discussions we find that the appellants have failed to prove the need of increasing the share capital from Rs.5 lakh to Rs.40 lakh and increase in share capital with due notice to Respondent company who is the majority shareholders.

15. Learned counsel for the Appellants submits that the Respondent company has subscribed the increase share capital and sent 30000 USD i.e. Rs.1626900/- and hence 162690 shares of Rs.10/- each have been allotted to Respondent Company.

16. Learned counsel for the Respondent submits that this amount has been sent by the Respondent company towards the invoice raised by the appellant company not for the share capital.

17. We have considered this argument. HDFC Bank issued certificate of foreign inward remittance letter dated 3.4.2013 in which it is mentioned that amount 30000 USD have been sent by the Respondent company to appellant company i.e. equivalent to Rs.1626900/-. This amount was credited in the bank account of the appellant company on 2.4.2013. Whereas the appellants tried to show that the amount was for subscribing the increase share capital. The resolution for increasing share capital was passed on 27.9.2013. Thus how the amount was sent before passing the resolution not explained by the appellants. Thus we are unable to convince with the arguments that the Respondent company has subscribed the increase share capital.

18. It is apparent that after the re-allotment of shares, the shareholding of Respondent company is diluted from 51% to 47%.

19. Learned counsel for the appellant submits that after the allotment of shares to appellant N.2 to 4 they infused the amount in the company for the same they relied on the ledger entries.

20. The appellants have not filed the copy of the bank account to show that the amount has been credited in the company's account. Therefore, on the basis of the ledger entries which are not coincide with the bank entries it cannot be held that the subscription amount has been deposited by the appellant No. 2 to 4 in company's account.

21. With the above discussions we are of the view that NCLT has rightly held that the share capital of appellant company was increased without establishing the need for capital and without following due procedure and obtaining consent of major shareholders i.e. Respondent company and even without infusing of funds/paying subscription on behalf of the appellant No.2 to 4. Dilution of shareholding of Respondent from 51% to 47% and the increase of authorised capital from Rs.5 lakh to Rs.40 lakh allegedly on 27.9.2013 is illegal and liable to be declared void.

22. Learned counsel for the appellants submit that Smt Shashi Gupta was appointed for managing the affairs of the company. For her appointment no permission was required as the Board is competent to appoint the employee. From her salary TDS was deducted and there is nothing on record for giving a finding of siphoning of funds by the appellant. In this regard the findings of the NCLT is erroneous, therefore, liable to be set aside.

23. On the other hand Learned counsel for the Respondent submit that Smt Shashi Gupta is the wife of appellant No.2, Rajender Kumar Gupta. Her name is not shown in the list of employees. It is deliberate act of the appellant No.2 and 3. Rs.3,22,220/- has been paid to Smt Shashi Gupta. It is a clear case of siphoning of funds from the appellant company. Admittedly the company was managed and controlled by the appellant No.2 and 3. Therefore, when the wife of appellant No.2 was appointed in the company it was obligatory on the part of the appellant No.2 and 3 that on prior approval she should have been appointed. NCLT has rightly held that case of oppression and mismanagement has been made out hence the appeal be dismissed.

24. We have gone through the record. It is admitted fact that Smt Shashi Gupta wife of appellant No.2 was appointed and was paid salary of Rs.50000/- per month and before her appointment no prior approval was obtained. Appellants are unable to convince why her name is not mentioned in the list of employees of the appellant company.

25. On these facts we are of the opinion that NCLT has rightly held that the act of appellant is prejudicial to the interest of the appellant company and amounts to siphoning of funds from the appellant company.

26. NCLT has rightly held that there is deadlock in the company and there is no possibility that the deadlock can be resolved and the business can be operated with the shareholder agreement, MOA and AOA of the appellant company. As the NCLT has allowed the company petition and directed that the increase in authorised capital from Rs.5 lacs to Rs.40 lacs by Resolution dated 27.9.2013 is illegal and void. Consequently, Form II filed with the Registrar of Companies is cancelled. NCLT has further directed that there are instances regarding manipulation of annual financial statements and siphoning of funds from the appellant company, therefore, direct to appoint an independent auditor who can perform audit of the financial mismanagement and siphoning of the funds of the appellant company.

27. We affirm the order passed by the NCLT as we find no substance in this appeal. Therefore, the appeal is hereby dismissed. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi
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