

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No.199 of 2019

(Arising out of Order dated (07.06.2019) passed by National Company Law Tribunal, Jaipur Bench(Rajasthan) in CP No.112/ND/2017 (TA No.49 of 2018)

IN THE MATTER OF:

1.Navneet Gupta

B-33, Karni Nagar Bikaner,
Rajasthan - 334001

...Appellant

Vs.

1.Bharat Tractors Private Limited

Registered Office at Gangashahar Road, Bikaner,
Rajasthan – 334001

2.Ashok Kumar Gupta

S/o Late Ram Kumar Gupta
B-29, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

3.Mahesh Kumar Gupta

S/o Late Ram Kumar Gupta
B-33, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

4.Mahesh Kumar Gupta

(As karta of HUF of Mahesh Kumar Gupta)

S/o Late Ram Kumar Gupta
B-33, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

5.Rajendra Kumar Gupta

S/o Late Ram Kumar Gupta

B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

6. Rajendra Kumar Gupta

(As Karta of Rajendra Kumar Gupta HUF)

B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

7. Anita Gupta

W/o Rajendra Kumar Gupta
B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

8. Chanda Gupta

S/o Sh M.K Gupta
B-33, Karni Nagar
Nagnechiji Temple Road
Bikaner, Rajasthan – 334002

9. Ashok Kumar Gupta

(As karta of Ashok Kumar Gupta HUF)

B-29, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

10. Riddhi Autowheels Pvt. Ltd

Opposite Rail Dada Bari,
Gangashahar, Bikaner Rajasthan

11. Hyundai Motor India Limited

Having Office at 2nd, 5th and 6th Floor,
Corporate One (Bani Building)
Plot No.5, Commercial Centre, Jasola,
New Delhi - 110025

...Respondents

Present:

For the Appellant : Mr Palash Agarwal, Advocate.

For the Respondents : Mr. Darpan Wadhwa, Sr. Advocate with

Mr.Pallav Pandey and Mr.Pragalbh Bhardwaj

Mr.Toyesh Tewari, Advocates for Respondent
No.5,6,7 and 10.

With

Company Appeal (AT) No.241 of 2019

(Arising out of Order dated (07.06.2019) passed by National Company Law Tribunal, Jaipur Bench(Rajasthan) in CP No.112/ND/2017 (TA No.49 of 2018)

IN THE MATTER OF:

1.Mahesh Kumar Gupta

S/o Late Ram Kumar Gupta
B-33, Karni Nagar
Nagnechiji Temple Road Bikaner,
Rajasthan - 334002

2. Mahesh Kumar Gupta

(As Karta of HUF of Mahesh Kumar Gupta)

S/o Late Ram Kumar Gupta
B-33, Karni Nagar
Nagnechiji Temple Road Bikaner,
Rajasthan - 334002

3.Chanda Gupta

S/o Sh M.K.Gupta
B-33, Karni Nagar
Nagnechiji Temple road Bikaner,
Rajasthan - 334002

...Appellants

Vs.

1.Bharat Tractors Private Limited

Registered Office at Gangashahar Road, Bikaner,
Rajasthan – 334001

2.Ashok Kumar Gupta

S/o Late Ram Kumar Gupta
B-29, Karni Nagar

Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

3.Navneet Gupta

B-32, Karni Nagar,
Pawan Puri,
Bikaner – 334001

4.Mr.Ashok Kumar Gupta

(as Karta of Ashok Kumar Gupta HUF)

B-29, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

5.Rajendra Kumar Gupta

S/o Late Ram Kumar Gupta
B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

6. Rajendra Kumar Gupta

(As Karta of Rajendra Kumar Gupta HUF)

B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

7.Anita Gupta

W/o Rajendra Kumar Gupta
B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

8.Riddhi Autowheels Pvt. Ltd

Opposite Rail Dada Bari,
Gangashahar, Bikaner Rajasthan

9.Hyundai Motor India Limited

Having Office at 2nd, 5th and 6th Floor,
Corporate One (Bani Building)
Plot No.5, Commercial Centre, Jasola,
New Delhi - 110025

...Respondents

Present:

For the Appellants : Mr.Sourabh Gupta, Mr.Puneet Yadav and
Mr.Tarun Arora, Advocates.

For the Respondents : Mr.Darpan Wadhwa, Sr.Advocate with
Mr.Pallav Pandey and Mr.Pragalbh Bhardwaj
Mr.Toyesh Tewari, Advocates for Respondent
No.5,6,7 and 10, Mr.Palash Agarwal, Advocate
for R3.

With

Company Appeal (AT) No.242 of 2019

**(Arising out of Order dated (07.06.2019) passed by National Company Law
Tribunal, Jaipur Bench(Rajasthan) in CP No.112/ND/2017 (TA No.49 of
2018)**

IN THE MATTER OF:

1.Ashok Kumar Gupta

S/o Late Ram Kumar Gupta
B-29, Karni Nagar
Nagnechiji Temple Road Bikaner,
Rajasthan - 334002

2. Mr.Ashok Kumar Gupta

(As Karta of HUF of Ashok Kumar Gupta)

B-29, Karni Nagar
Nagnechiji Temple Road Bikaner,
Rajasthan - 334002

...Appellants

Vs.

1.Bharat Tractors Private Limited

Registered Office at Gangashahar Road, Bikaner,
Rajasthan – 334001

2.Navneet Gupta

B-32, Karni Nagar,
Pawan Puri,
Bikaner – 334001

3. Mahesh Kumar Gupta

S/o Late Ram Kumar Gupta
B-33, Karni Nagar
Nagnechiji Temple Road Bikaner,
Rajasthan - 334002

4. Mahesh Kumar Gupta

(As Karta of HUF of Mahesh Kumar Gupta)

S/o Late Ram Kumar Gupta
B-33, Karni Nagar
Nagnechiji Temple Road Bikaner,
Rajasthan - 334002

5. Rajendra Kumar Gupta

S/o Late Ram Kumar Gupta
B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

6. Rajendra Kumar Gupta

(As Karta of Rajendra Kumar Gupta HUF)

B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

7. Anita Gupta

W/o Rajendra Kumar Gupta
B-28, Karni Nagar
Nagnechiji Temple Road, Bikaner
Rajasthan – 334002

8. Chanda Gupta

s/o Sh M.K. Gupta
B-33, Karni Nagar
Nagnechiji Temple Road
Bikaner, Rajasthan - 334002

9. Hyundai Motor India Limited

Having Office at 2nd, 5th and 6th Floor,
Corporate One (Bani Building)
Plot No.5, Commercial Centre, Jasola,
New Delhi – 110025

10.Riddhi Autowheels Pvt. Ltd
Opposite Rail Dada Bari,
Gangashahar, Bikaner Rajasthan

...Respondents

Present:

For the Appellants : Mr.Vivek Malik,, Mr.Vivek Sinha Advocates.

For the Respondents : Mr.Darpan Wadhwa, Sr.Advocate with
Mr.Pallav Pandey and Mr.Pragalbh Bhardwaj,
Advocates for Respondent No.5,6,7 and 10,
Mr.Saurabh kalia and Mr.Palash Agarwal,
Advocate for R2.

J U D G M E N T

(29th November, 2019)

Dr. Ashok Kumar Mishra, Technical Member

1. These three Appeals i.e. Company Appeal (AT) No. 199, 241 and 242 of 2019 have been preferred by the Appellant and the Respondents against the common order dated 07th June, 2019 passed by the National Company Law Tribunal, Jaipur Bench ('for short Bench'). These Appeals were heard together and disposed of by this common judgement.

2. The Appellants have filed the Applications under Section 421 R/w Section 241, 242 & 59 and other provisions of the Companies Act, 2013 and prayed for quashing and set aside the impugned order dated 07.06.2019 passed by National

Company Law Tribunal, Jaipur Bench in C.P No.112 (ND) of 2017 (T.A No.49 of 2018); common issue in all the three appeals i.e. Company Appeal (AT) No. 199, 241 and 242 of 2019 along with other reliefs.

3. M/s.Bharat Tractor Private Limited (Respondent No.1 Company) is a Company incorporated on 16.12.1999 under the provisions of the Companies Act, 1956 as a private limited Company with the Registrar of Companies, Rajasthan having registration No. U29211RJ1999PTC016054 and that its registered office is situated at Gangashahar Road, Bikaner, Rajasthan 334001. The Respondent No.1 Company i.e. M/s.Bharat Tractor Private Limited was promoted & incorporated by the three brothers i.e. Ashok Kumar Gupta, Shri Mahesh Kumar Gupta & Rajendra Kumar Gupta with the main objects to carry on the business of manufacture, traders, agency, marketing in all kinds of tractors, vehicles, motor cars, lorries trolly, auto rickshaws, agriculture implements and irrigation systems etc. The Company is closely held Private Limited Company with family members as shareholders established on the principles of equity, fairness and transparency and no decision was ever taken independently by any of the Directors.

4. The Family tree is given hereunder as submitted by the Appellants/Petitioners for easy reference:

Family Tree
Late Sh.Ram Kumar Ji Gupta (13.09.1998) &
Late Smt.Sudarshana Devi Gupta (21.03.2016)



Veer Karna Gupta (Father) ↓ Petitioner Group	S.K.Gupta ↓ Petitioner Group	A.K.Gupta ↓ Respondent No.2	M.K.Gupta ↓ Respondent No.3	R.K.Gupta ↓ Respondent No.5
Navneet Gupta (Son) Petitioner	Indu Gupta (Wife) Petitioner Group	Nakul Gupta (Son)	Chanda Gupta (Wife) Respondent No.8	Anita Gutpa (Wife) Respondent No.7
3 Sisters all married and settled	-Disha (Daughter) -Sanket (Son)	Mukul Gupta (Son)	Karikaya Gupta (Son) Vinayak Gupta (Son)	Rajat Gutpa (Son) Ridhi Gupta (Daughter)

5. The shareholding percentage in the 1st Respondent/Petitioner Company is given hereunder for easy reference by way of a tabulation:

SL No.	Name of the Respondent/Petitioner	Shareholding percentage
1.	Ashok Kumar Gupta	18.15%
2.	Mahesh Kumar Gupta	20.31%
3.	Mahesh Kumar Gutpa (HUF)	05.84%
4.	Rajendra Kumar Gupta	19.21%
5.	Rajendra Kumar Gupta (HUF)	05.84%
6.	Anita Gupta	04.17%
7.	Chanda Gupta	00.21%
8.	Ashok Kumar Gupta (HUF)	05.84%
9.	Navneet Gupta along with consentor shareholders	20.44%
Total		100%

6. The Authorized share capital of the Company is Rs.5,000,000/- and the paid up capital is Rs.23,97,900/-. The Company is a closely held family Company

wherein all the shareholders are the family members. It was always in nature of quasi partnership.

7. M/s. Bharat Tractor Private Limited was being run from the land measuring 108 × 110 sq. ft near Rail dadabari, Gangashahar Road, Bikaner, Rajasthan which is owned by Mr.Ashok Kumar Gupta, Mr.Mahesh Kumar Gupta, Mr.Rajendra Kumar Gupta and Mrs.Anita Gupta and all the family members have leased the said land vide lease deed dated 11.01.2000 in favour of Respondent No.1 Company. All the three brothers had equal share in the said land.

8. The dealership with Bajaj Auto Ltd was started on 19th April, 2000 and thereafter on 4th July, 2003, the dealership of Hyundai Car was started. Thus, the entire business of the Respondent Company was with these two dealerships and all the money required for starting the two dealerships was invested by Respondent No.1 Company and all family members. Respondent No.1 Company transferred unsecured loan of all shareholders and invested the same in Hyundai Motors Dealership.

9. It is also observed that Mr.Rajendra Kumar Gupta i.e. Respondent No.5 was asked to apply for the dealership of Hyundai Motors on behalf of the Respondent No.1 Company i.e Bharat Tractor Private Limited. All the money required in starting the dealership of Hyundai Dealership was invested by the Respondent No.1 Company and all the family members.

10. Both the dealerships were taken after discussions between the parties and having consent of majority of shareholders and after duly conducting proper Board Meetings and Extra Ordinary General Meetings.

11. No one had complete control in any form and at no point any Director of the Respondent No.1 Company managed the business of the Respondent No.1 Company independently. The Respondent No.1 Company was working smoothly and reached great heights.

12. The Respondent No.1 Company in 2003 had two divisions one of Bharat Bajaj which managed the business of Bajaj Auto dealership and other of Bharat Hyundai which managed the dealership of Hyundai Motors. Both the divisions were situated in the same premises wherein Respondent No.1 was established. In the year 2005-2007 some disputes had started between the Appellants and the Respondent No.5 i.e Rajendra Kumar Gupta. However, the dispute was resolved through constant efforts of the family members.

13. Thereafter, in the year 2013 dispute arose on the issue of siphoning away of huge sums of money from the Company by Respondent No.5 i.e. Rajendra Kumar Gupta. Thereafter business continued as usual but on friction between the various family members was affecting the business as there was completely loss of faith amongst the family members on account of the actions of Respondent No.5. However, the same was mutually resolved. In April-May, 2016 again disputes arose between the various members of the family, and various meetings

were held to resolve the dispute. During the course of such meetings, the said Respondent No.5 offered to take over the Bharat Hyundai Business of the Respondent No.1 Company pursuant of making certain amount of payments to other family members, after which the business would be transferred to Respondent No.10 Company owned and controlled by Respondent No.5.

14. Thereafter, a family settlement was signed by 5 family members i.e. Veer Karan Gupta, Ashok Kumar Gupta, Shiv Kumar Gupta, Mahesh Kumar Gupta & Rajender Kumar Gupta on 29th May 2016 and thereafter the Memorandum of Undertaking/Understanding was signed by all the parties on 31st May, 2016. It was further agreed to hold an EOGM and other compliance of law and agreed to be conducted to formalize division.

15. However, the provisions of Section 180 of the Companies Act, 2013 is not applicable to private limited Company which restricts powers of the Board of Directors to certain extent. This refers to Ministry of Corporate Affairs notification dated 05.06.2015 published in the Gazette of India. We have also observed that the provisions of Section 180 of the Companies Act, 2013 is not applicable to Private Limited Company.

16. We have seen the various documents as stated supra including the Auditors Report up to 31st March 2016 submitted on 28th June, 2016. There is no Coercion, Undue Influence etc. in accordance with the Indian Contract Act, 1872. We have also observed that no party has claimed that they have signed MoU and family

settlement under Coercion and Undue Influence etc. Hence, this is a valid contract in terms of Section 10 of the Indian Contract Act, 1872. Once the contract is concluded, in accordance with the Indian Contract Act, 1872 its terms cannot be changed accordingly to the will of one party; (*Karnal Distillery Co (P) Ltd vs. Union of India, AIR 1977 SC 509; Ishwar Dass Nasa vs. State of Haryana, AIR 2012 SC 852, 2012 (1) SCC 753*).

17. In the light of the above findings, the NCLT has given in its order dated 07th June, 2019 which is fair and proper and also covered all the disputed issue raised in the main Company Petition. The NCLT has gone into the family settlements and also decision of the Apex Court and reached to a conclusion that the family settlements are required to be treated with soft gloves by applying the special equity principle as it results in saving the family as a whole from inter-se disputes and acrimonious relations but on the other hand promotes peace and harmony in the family.

18. The case was first heard on 30.07.2019, wherein the Appellate Tribunal has suggested to the parties to propose amicable settlement and make proposal for Mediator for settlement and also passed stay of impugned order dated 07th June, 2019 until further orders. Thereafter, the said Appeals were listed on various dates viz. 02.09.2019, 01.10.2019, 16.10.2019, 18.11.2019 & 19.11.2019 and it was adjourned for reason due to paucity of time and others. However, both the parties are not able to resolve the issue in question affording ample opportunities

for the same. Therefore, there is no other alternative option for the Appellate Tribunal except to decide the matters on merits.

19. The order passed by the NCLT is quite comprehensive and also adopted the principle of fairness including the appointment of Independent Chartered Accountants to draw up financial statements as of 31st May, 2016. The parties are at liberty to raise objections to Draft Accounts and thereafter to be finalized by Independent Chartered Accountants. Parties have been provided liberty to approach the NCLT Jaipur Bench, in case of any difficulty in implementing order.

20. We, thus, find no merit in these appeals. Accordingly, the appeals are dismissed. Pending Interlocutory Application(s), if any, is/are disposed of & stay vacated. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi

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