

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
COMPANY APPEAL(AT) NO.392 OF 2018

IN THE MATTER OF:

Vijay Bangia
E-8/46, Basant Kunj,
Arera Colony,
Bhopal 462016

Appellant

Vs

1. Suvidha Law House Pvt Ltd
28 Malviya Nagar,
Bhopal 462001

2. Vinay Bangia
E-7, 782 A
Arera Colony,
Bhopal 462016

3. Poonam Bangia
E-7, 782A
Arera Colony,
Bhopal 462016

4. Sangeeta Bangia
E-8/46 Basant Kunj,
Arera Colony,
Bhopal 462016

Respondents

For Appellant:- Mr. Yashvardhan, Mr. Abhishek Praharaj and Mr. Apoor Shukla, Advocates.

For Respondents: - Mr. Vijayesh Atre, Advocate for Respondent No.2 and 3.

ORAL JUDGEMENT

Per: A.I.S.Cheema

21.01.2019 - 1. Heard counsel for the appellant- original Respondent No.2 in the Company Petition No.6/2018 which is pending before the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad (NCLT in short). The present

Respondent No.2-original petitioner filed IA No.358/2018 before the NCLT making the following prayers:-

- i) To kindly permit the applicant/petitioner to amend the array of title of the parties in the Company Petition No.6 of 2018 to make the Registrar of Companies, MP as Respondent No.4.
- ii) To kindly appoint Shri Jai Dev Bangia as interim director of the Company effective from 1st April, 2014 till the disposal of the case, to enable him to finalise, sign and file the outstanding balance sheets of the Respondent No.1 company for the financial years 2014-15, 2015-16, 2016-17 and 2017-18 with the Registrar of Companies, Madhya Pradesh, with the help from the present applicant for the sake of restoration of the name of the company into the Register of Companies and also to restart the business of the company.
- iii) To direct the respondents to open the lock of the registered office of the Company and hand over peaceful possession of the office and statutory records of the company to the interim-director and to the applicant herein to enable them to restart the business operations of the Company.
- iv) To kindly direct the Registrar of Companies, Madhya Pradesh to take on record the balance sheets and annual returns of the Respondent No.1 company for the financial years 2014-1, 2015-16, 2016-17 and 2017-18 on payment of normal filing fee, without initiating prosecution against them for the delay so caused till the date of filing, in the interest of justice.
- v) To kindly direct the respondents to maintain status quo as to the assets of the Respondent No.1 company; and
- vi) Any other appropriate relief which the Hon'ble Tribunal may consider appropriate in the facts and circumstances of the case.

2. The NCLT heard both the parties and passed the impugned interim order dated 15.10.2018. The operative order in para 9 reads as under:-

“Perused the record as well as the document filed by the applicant, I found it expedient to direct the Respondent No.2 to allow the access of the applicant to complete the statutory books of account as well as balance sheet for the period from 2014 till date, by appointing company’s auditor so as to file the same before ROC for revival of

the company has also for the interest of the company, more so when appeal under Section 252 of the Companies Act, 2013 is pending. In view of the above the respondent no. 2 is further directed to open the lock of the registered office of the company and allow the peaceful access of the applicant for preparation of the books of account and other statutory compliances, so as to file the same before the Registrar of Companies and to enable them to restore the business by appointing any interim director.

Further, with regard to the prayer for impleading ROC as a party to the petition is also allowed. The applicant is allowed to amend the CP 6/2018, accordingly, by arraying the ROC as respondent no.4 with a notice to the ROC.

Accordingly, the IA 358/2018 is disposed of.”

3. It appears that after the company petition was filed by Respondent No.2 and 3 making allegations of oppression and mismanagement, the company came to be struck off on 10.7.2018 (Page 241) and the original petitioner No.1 has moved NCLT by another petition under Section 252 of the Companies Act, 2013 for restoration of the name of the company. The same is Company Appeal No.386/252(3)/NCLT/AHM/2018 (Page 242).

4. On the basis of such petitions being pending, as the name of the company has been struck off, the original petitioner No.1 moved IA 358 for urgent interim relief making the above prayers and pointed out urgency.

5. Learned counsel for the appellant has submitted before us that the company is a family concern having two brothers as the directors i.e. the appellant Mr.Vijay Bangia and Respondent No.2 Mr. Vinay Bangia. The company has four shareholders who are the present appellant and Respondents No.2 to 4. The Respondent No.3 is stated to be wife of Respondent No.2 and Respondent No.4 is stated to be wife of appellant. It appears from the submissions made by the counsel for both sides that the relations between parties have strained and because of the strained relations there is deadlock in the company. The counsel for appellant states that the appellant-original Respondent No.2 has also filed a petition for winding up having No.16/27(12)E,272/AHM/2018.

6. Having heard counsel for both sides and looking to the circumstance that the name of the company has been struck off, we have asked the counsel for both the parties to ask parties to see reason. The counsel for the appellant has suggested that mediation could be a way out. An effort may be made. However, it appears to us that no harm would be caused if in the meanwhile the statutory books of accounts get completed and balance sheets are finalised, and audited. Counsel for both sides agree and we propose the following modification in para 9 of the impugned order:-

“9 (a) Perused the record as well as the documents filed. I find it expedient to direct that in presence of Commissioner (to be appointed by NCLT) the lock(s) as may be there on registered office of the company shall be opened by the party(s) and access will be allowed to the applicant, original petitioner to complete the statutory books of accounts as well as balance sheets for the period 2014 till date, in the presence of company auditor, CA Mr. Manish Bansal so as to file the same before ROC for revival of the company. The party/s will open the lock(s) of the registered office of the company and allow the Commissioner appointed by NCLT and the company’s auditor peaceful access for preparation of books of accounts and statutory compliances to file the same with the ROC.

Further with regard to prayer impleading ROC as a party to the petition is allowed. The applicant/original petition is allowed to amend Company Petition No.6/2018, accordingly, by arraying ROC as Respondent No.4 with a notice to the ROC.

Accordingly, IA No.358/2018 is disposed off.”

7. Counsel for both sides agree to the above proposed paragraph to be substituted in place of para 9 of the original impugned order (as reproduced in para 2 supra). Counsel for the respondents fairly states that he would not be pressing for appointment of interim director pursuant to the impugned order. Accordingly, in place of para 9 of the impugned order passed by NCLT (which we have reproduced in above para 2) we substitute para 9 as above, in impugned order.

8. The NCLT is directed to appoint Commissioner in whose presence the premises would be opened and in whose presence the acts of completion of statutory accounts, balance sheets would be done so as to audit the same. When the NCLT appoints a Commissioner, the NCLT would fix/give a date for opening the lock(s) to complete the statutory books of accounts, balance sheets and auditing. NCLT may pass further necessary directions and orders for the above purpose.

9. Simultaneously, while the above steps are being taken, the NCLT may appoint a Mediator to mediate between the parties.

10. The observations made by NCLT in the impugned order or observations made by us in the present order would not weigh with the NCLT when it takes up the company petition for disposal at the time of final hearing.

11. We find it just to pass order as above. Appeal is disposed accordingly. No orders as to costs. Dasti allowed.

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

(Mr. Balvinder Singh)
Member (Technical)

Bm/nn