

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 57 of 2019

(Arising out of Order dated 14th February, 2019 passed by the National Company Law Tribunal, Principal Bench, New Delhi, in C.P. No. 18(ND)/2015)

IN THE MATTER OF:

M/s. Atlas Cycles (Haryana) Ltd. & Ors.

...Appellants

Vs

Mr. Vikram Kapur & Ors.

....Respondents

Present:

For Appellants: Mr. Sudhir K. Makkar, Senior Advocate with Ms. Saumya Gupta, Advocate.

For Respondents: Dr. U.K. Chaudhary, Senior Advocate with Ms. Manisha Chaudhary, Ms. Samridhi Gogia, Mr. Sumit Malhotra and Mr. Dhruv Gupta, Advocates for R-1 & R-2.

Ms. Meenakshi Singh and Mr. Abhishek Choudhary, Advocates for R-5 to R-13

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

1st & 2nd Respondents Mr. Vikram Kapur and Mr. Angad Kapur filed application before erstwhile Company Law Board in February, 2015 being C.P No. 18 (ND)/ 2015 *inter alia* seeking demerger of the ‘Sonepat Unit’ in light of the ‘Memorandum of Understanding’ (‘MoU’) dated 31st August, 2003 and the ‘Arbitral Award’ dated 1st November, 2014. The petition, on constitution of the National Company Law Tribunal (‘Tribunal’ for short), was transferred to the Principal Bench, New Delhi.

2. In the said petition, an application under Rule 11 of the 'National Company Law Tribunal Rules, 2016' was filed by Applicants ('Appellants' herein- 1st, 12th & 14th to 16th Respondents in the petition) with prayer to grant permission to the Appellant Company- 'M/s. Atlas Cycles (Haryana) Ltd.' to approach the consortium banks for release of title deeds in respect of non-core assets under the charge of 'Sonepat Unit' so as to proceed with its sale in accordance with the resolutions passed by the Board.

3. Before the Tribunal, the petitioners ('1st & 2nd Respondents' herein) brought attention that the resolution passed by the Board of Directors on 14th December, 2017 is under challenge in C.A. No. 179(PB)/ 2018. The said application was disposed of on 2nd August, 2018 and the Respondents ('Appellants' herein) were restrained from giving effect to the resolutions dated 14th December, 2017 and 24th February, 2018 in the light of the previous orders dated 24th August, 2015 and 7th September, 2015.

4. The Appellants ('Respondents' before the Tribunal) also filed C.A. No. 511(PB)/2018 and C.A. No. 618(PB)/2018 for seeking directions from this Tribunal to take certain urgent interim measures in the light of the subsequent developments which was also disposed of on 3rd August, 2018. The said order was challenged before this Appellate Tribunal which was disposed of vide order dated 28th August, 2018.

5. Before the Tribunal, the Applicants ('Appellants' herein) have asserted that grant of relief in their application is imperative for a more meaningful and purposive interpretation

of the orders passed by this Appellate Tribunal on 28th August, 2018 & 17th September, 2018. The reasons for filing the application have been spelt out as noticed by the Tribunal and set out below:-

- a. 'Sonepat Unit' has posted a loss of Rs. 6.63 crores for FY 2017-18.
- b. Quarterly unaudited results for the quarter ending 30.06.2018 'Sonepat Unit' - Loss of Rs. 2.41 crores.
- c. Overall financial condition of the company has been severely impacted due to heavy losses by 'Sonepat Unit'.
- d. On instructions of the Board, Rs. 21.59 crores has been paid till 30.09.2018 by Sahibabad unit to avoid the account of the company becoming NPA. Therefore Sahibabad unit is facing a liquidity crunch.
- e. The liabilities continue to mount on the company and the company is liable to pay nearly Rs. 32 crores to vendors due to the default of 'Sonepat unit'.
- f. Owing to defaults of 'Sonepat Unit', vendors have now restricted supply raw materials to Sahibabad unit thereby causing a serious situation as presently Sahibabad unit is

responsible for more than 90% of the total production of the company.

- g. The company has received over 80 legal notices under the 'Negotiable Instruments Act' on the cheques which were issued by the Management Committee of 'Sonapat Unit' and were returned dishonoured due to insufficiency of funds. Some of these have already culminated into legal cases and the Directors of the company have been summoned by various Courts. The liability of these notices is to the tune of nearly Rs. 5.3 crores.
- h. In the meanwhile the Respondent No. 1 company has received notices from NCLT, Chandigarh in light of petitions being filed under Section 9 of the Insolvency and Bankruptcy Code by various suppliers/vendors of 'Sonapat Unit'. The details of the same are as follows:
- i. 'M/s. Varun Auto Industries'
 - v. 'M/s. Atlas (Cycles) Haryana Ltd.' being C.P.(I.B.)No.175/Chd/Hry/2018:
Vide order dated 26.09.2018 the

Tribunal granted Atlas five weeks time to file a reply and the matter is fixed for arguments on 15.11.2018.

- ii. M/s. Mahajan Tyre Company v. M/s. Atlas (Cycles) Haryana Ltd. being C.P.(I.B.)No.240/Chd/Hry/2018 : Vide order dated 05.10.2018 the Tribunal granted Atlas five six weeks time to file a reply and the matter is fixed for arguments on 13.12.2018.
- iii. M/s. Surindera Cycles v. M/s. Atlas (Cycles) Haryana Ltd. being C.P.(I.B.)No.261/Chd/Hry/2018 : Vide order dated 10.09.2018 the Tribunal issued notice on the application filed by the Operational Creditor and is fixed for appearance on behalf of Atlas on 14.12.2018.
- iv. Avon Ispat – S. 8 IBC notice received

v. Berger Paints - S. 8 IBC notice
received

- i. Over a period of time, 'Sahibabad' and 'Sonepat Unit' have contributed a sum of Rs.45.51 crores and Rs. 26.68 crores respectively towards meeting outstanding liabilities of 'Malanpur Unit', pursuant to its closure under directions of the Board. A communication dated 04.03.2018 was sent to the Board by the CFO of the company which clearly indicates that the net outflow of funds from Sahibabad unit against such contributions was Rs. 29.18 crores while the net outflow of fund from 'Sonepat Unit' towards the said contribution was only Rs. 8.25 crores.

6. The basis of the application was the resolution dated 10th July, 2018 passed by the Board of Directors which resolved that "*sanction is hereby accorded for requesting the Consortium Bankers for release of title documents of 'ASTI', 'Atlas Auto' and 'non-core assets' under the charge of 'Sonepat Unit'*". The list of assets in respect of which release of title deeds is sought from the bank is as under:

- i. 'Atlas Steel Tube Industries', Bawal
- ii. 'Atlas Auto Industries', Rasol

7. Non-core assets of the company under the charge of 'Sonepat Unit' was shown therein which includes 'Residential House', 'Bawal Factory', 'Rasoi Factory' and 'Bhind- Malanpur Factory', as detailed below:-

S/N	PROPERTY'S TYPE	ADDRESS	AREA
1	Residential House	24-B, Model Town, Sonepat	792 sq yard
2	Residential House	102 L Sonepat	504 sq yard
3	Residential House	137-L, Model Town, Sonepat	500 sq yard
4	Residential House	110-L, Model Town, Sonepat	590 sq yard
5	Residential House	264, Model Town, Sonepat	213 sq yard
6	Residential House	216 HBC, Murthal Road, SNP	229.3 sq yard
7	Residential House	A-7&8, Prem Nagar, Sonepat	711.11 sq yard
8	Residential House	115-116, Housing Board Colony, Sonepat	573.75 sq yard each flat
9	Residential House	58-L, Model Town, Sonepat	564
10	Bawal Factory	Plot No.1, Sector-V, Growth Central, Bawal - Rewari	
11	Rasoi Factory	Waka Village, Nathupur, GT Road, Sonepat	
12	Bhind- Malanpur Factory	Plot No. 16-17, 21-22, Industrial Area, Malanpur, Distt. Bhind	

FURTHER RESOLVED that sanction is hereby accorded for submission of an undertaking to the Consortium Banks that pursuant to the release of title deeds of ASTI, Atlas Auto and non-core assets under the charge of Sonepat unit, a sum of Rs. 20 crores from out of sale proceeds of ASTI shall be paid to the Consortium Banks to reduce the exposure of the company and the release of title deeds may be made subject to such undertaking. Such proposal shall be submitted under the signatures of Sb. I.D. Chugh, Whole Time Director.”

8. The Applicants (‘Appellants’ herein) plea before the Tribunal was that the petitioners- non applicants (‘Respondents’ herein) could not operationalize the ‘Sonepat Unit’ and production from the ‘Sonepat Unit’ continues to be zero. It was further alleged that the petitioners (1st & 2nd Respondents herein) have failed to furnish the requisite information sought by the Board of Directors and no information has been furnished regarding the outstanding liabilities to its suppliers. The information is necessary to prepare the defence in the proceedings initiated by ‘Operational Creditors’ under the ‘Insolvency and Bankruptcy Code, 2016’ in NCLT, Chandigarh. The ‘Sonepat Unit’ has not been able to clear its statutory liabilities later on liquidating the outstanding liabilities of suppliers. The Board of Directors has strongly felt that the only possible solution for the Respondent No. 1 company is to liquidate the non-core assets of the company so that additional funds could be generated and be utilized to stabilize the financial position which otherwise is getting adversely impacted.

9. Non-applicants/Petitioners (1st & 2nd Respondents herein) despite the opportunity granted, did not file any reply and their counsel addressed the argument on the ground that the application is not maintainable as the relief claimed has already been declined in the earlier proceedings.

10. The Tribunal on hearing the parties observed and passed following order:

“19. It was clarified that the order passed by this Tribunal relating to continuity of the operations of the orders dated 24.08.2015 & 07.09.2015 and suspension of resolution dated 13.08.2015 and the order of abeyance relating to resolution dated 14.12.2017 & 24.02.2018 were to continue till the final disposal of the company petition. The Bench also clarified clause 3 to observe that in default of making payment within 30 days with regard to the cycles and other parts, the interim order shall stand vacated.

20. Dr. Chaudhary has rightly contended that after passing the order on 28.08.2018 by the Hon’ble Appellate Tribunal or clarifying the same on 17.09.2018 not a penny has been

infused in the Sonapat unit to help and facilitate it to achieve optimum level of production nor a single cycle or parts from Sahibabad unit has been entrusted to it for sale to service its own territory. It is also evident that the issue like Insolvency and Bankruptcy Code, 2016 and apprehension of applicant- respondent No. 1 company facing the Corporate Insolvency Resolution Process were also considered by this Tribunal as well as by the Hon'ble Appellate Tribunal. Moreover, in pursuance of order dated 12.10.2018 the non-core assets of Malanpur unit is already in the process of being sold and the sale proceeds are likely to be utilized for one purpose or the other. It would not lie in the mouth of the applicant- respondent No. 1 company that they would not follow the direction issued by the Hon'ble Appellate Tribunal by infusing funds in the Sonapat unit and then to raise the bogie of lack of funds and increasing liability of the Sonapat unit. Likewise, no effort has been made to supply the cycles or other parts manufactured by Sahibabad unit to Sonapat unit in terms of

the order dated 28.08.2018/17.09.2018 passed by the Hon'ble Appellate Tribunal. Despite this Tribunal has shown indulgence to the parties to argue the matter finally but the matter has been got adjourned on one pretext or the other. In fact applicant-respondents No. 1, 12, 14 to 16 have joined hands to defeat the directions of the Hon'ble Appellate Tribunal. By not infusing funds the applicants are pushing the Sonepat Unit to penury and create a situation to file an application for issuance of direction. It is wholly unfair. Therefore, we are not inclined to grant any interim relief at this stage particularly when nothing has been placed on record to show that the applicant-respondent No. 1 company as such is unable to meet the liability of the Operational Creditors who have filed petitions under the Insolvency and Bankruptcy Code, 2016.

21. Mr. R.S Sun, learned senior counsel appearing for TDI Infratech Limited has submitted that one property at item No. 11 of the table may not be included as a part of the prayer

made in this application as TDI Infratech Limited has acquired some interest in it. As we are dismissing the application the request made by Mr. Suri would not survive. We order accordingly.”

11. With the aforesaid observations, the application was dismissed which is under challenge in this appeal.

12. For deciding the issue, it is desirable to notice the relevant background of the case as narrated by the Appellant and detailed below:

13. Late Rai Bahadur Janaki Dass Kapur had three sons, namely Sh. Bishambar Dass Kapur, Sh. Jaidev Kapur and Sh. Jagdish Kapur. It was considered expedient to split the management, ownership and control of the companies and assets jointly owned by the family in three equal shares and award one share to each of the three units/families which would thereby help in better management and control, and further augment the business prospects of the reconstituted units and business enterprises in the form of ‘Memorandum of Understanding’ dated 8th January, 1999. The said ‘Memorandum of Understanding’ *inter-alia* provided that the assets of the Kapur family will be divided into three baskets by the family, based on the valuation of the Mr. K.N. Memani and the said valuation would

be final and binding on the parties. The said 'MOU' further stipulated that in the event of any disputes and/or difference of opinion in any manner, the same shall be referred to the arbitration of Justice A.M. Ahmadi, former Chief Justice of India who was unanimously elected as the Sole Arbitrator. Immediately after the demise of Sh. Bishambar Dass Kapur in August 2000, some disputes arose between the family members and the arbitration proceedings commenced.

14. On 31st August, 2003, the Board of Directors of 'Atlas Cycles (Haryana) Ltd.' keeping in view the adversarial litigation between the Kapur family members, undertook restructuring of the controls and constituted three Management Committees in respect of the three manufacturing units, in a manner that each management committees consisted of members from one family unit. In accordance with the said resolution, the day to day management of the three units of Atlas was entrusted to three management committees constituted in terms of the said resolution. The Management committees were to have autonomy of operations and were subject to overall supervision and control by the Board of Directors. The Management Committee of 'Sonepat Unit' consisted of members from the of B.D. family Kapur group (except for Mr. Arun Kapur and family) Management Committee of 'Sahibabad Unit' consisted of members of Jaidev Kapur family group and Management Committee of 'Malanpur Unit' consisted of members of Jagdish Kapur family group.

15. Due to precarious financial position of 'Malanpur Unit' and various other reasons, vide resolution dated 5th October, 2014, the Board of Directors resolved to close the unit and suspended all manufacturing activity in the unit. The Board also directed that the territories of 'Malanpur Unit' shall be divided equally and serviced by the other two units i.e. 'Sonepat' and 'Sahibabad Unit'. It also resolved that all the liabilities of 'Malanpur Unit' shall be met out of sale of assets of 'Malanpur Unit'/ 'ASTI'/ 'Atlas Auto' and the deficit if any shall be borne equally by 'Sonepat' and 'Sahibabad Unit'. It also resolved that pending sale/ liquidation of assets of 'Malanpur Unit', both 'Sonepat' and 'Sahibabad Unit' shall contribute a sum of Rs. 10 crores each to tide over the immediate liabilities which include statutory dues and bank liabilities to prevent any situation of the bank account of the company turning 'NPA'.

16. The arbitration proceedings between the Kapur family members culminated into an award dated 1st November, 2014 passed by the Hon'ble Sole Arbitrator. It is pertinent to mention that the Learned Arbitrator, in contradiction to his previous orders, directed division of the management, control and ownership of Appellant no. 1 Company.

17. After issuance of the arbitral award, 1st to 3rd Respondents herein, filed C.S. (OS.) No.3510 of 2014 before the Hon'ble Delhi High Court inter alia praying for a decree of permanent injunction restraining the defendants from in any manner changing the Management Committee of 'Sonepat Unit' and from interfering with the

management and control of the said Unit in light of the 'MOUs' dated 8th January, 1999 and 31st August, 2003 and the arbitral award dated 1st November, 2014. A petition under Section 34 of the 'Arbitration and Conciliation Act, 1996' was filed in January 2015 by some members of the Kapur family against the Arbitral Award dated 1st November, 2014, being O.M.P. No. 30 of 2015 before the Hon'ble Delhi High Court.

18. Vide order dated 3rd August, 2015, the Hon'ble Delhi High Court partly allowed O.M.P. No.30 of 2015 and set aside the award of the Arbitrator in so far as it related to 'Atlas Cycles (Haryana) Ltd.' and public charitable Trusts. The Hon'ble High Court held that the Arbitrator had no jurisdiction in the matters concerning Appellant No.1 or its Board. 1st to 3rd Respondents have filed an appeal against the order dated 3rd August, 2015 under Section 37 of the 'Arbitration and Conciliation Act, 1996', being F.A.O. (OS.) No. 448/2015 and F.A.O. (OS.) No. 459 of 2015 which is pending adjudication before the Hon'ble Division Bench of the Delhi High Court. It is pertinent to mention that no stay order was granted against the order dated 3rd August, 2015."

19. It is informed that the application under Section 37 of the 'Arbitration & Conciliation Act, 1996' is still pending.

20. Earlier with regard to the resolution dated 24th February, 2018, interim order of stay having passed by the Tribunal on 14th March, 2018 and order was reserved in the Interlocutory Application. Number of applications was filed by the Appellant Company and some of the applications were filed by the 1st & 2nd Respondents/ Petitioners.

21. Vide order dated 3rd August, 2018, the Tribunal directed in the light of the order dated 2nd August, 2018, it did not think fit to pass any orders in C.A. No. 511 (PB)/ 2018 and C.A. No. 618 (PB)/ 2018 as the same showed that the Board of Appellant Company is trying to grab the territories of the Management Committee of 'Sonepat Unit'.

22. Aggrieved by the said orders, the Appellants filed appeal before this Appellate Tribunal being Company Appeal (AT) Nos. 260-262 of 2018. The said appeals were disposed of vide order dated 28th August, 2018 with part modification of the order dated 2nd August, 2018 passed by Tribunal, Principal Bench. The said order was corrected vide order dated 17th September, 2018. Relevant portion of which reads as follows:

"14. By the impugned order, the Tribunal has kept certain resolution in abeyance and directed to continue with the operation of the two orders dated 24th August, 2015 and 7th September, 2015. Two of the resolutions of the Board of Directors dated 14th December, 2017 and 24th February, 2018 have been kept in abeyance and the Board of Directors has been directed to facilitate the 'Sonepat Unit' in production to achieve the optimum level. The Applicant/Petitioner No.1 (Respondent herein) has also been directed to furnish all details sought by the Board of Directors of the Company relating to fund flow from the Government order and utilization thereof.

15. *Learned Senior Counsel appearing on behalf of the Appellants submits that if the Respondents are allowed to sign the cheques, many of the cheques will be bounced, as already bounced and it may result into initiation of 'Corporate Insolvency Resolution Process' against the Company.*

16. *Further, according to him, till the 'Sonepat Unit' starts with its production to achieve optimum level, the Company should be allowed to supply the products such as cycles and its parts from other units, which are producing in excess to their demand.*

17. *Though, the contesting Respondents have taken plea that the Company has been divided into three Companies but it is not in dispute that even now the Company (1st Appellant) is only one. However, we find that the Company has three units namely— 'Sonepat Limited', 'Malanpur Limited' and 'Sahibabad Limited', which are under the administrative control of one or other group of the same family, and have their respective jurisdiction to sale products and they are keeping separate accounts, unit wise.*

18. *The Memorandum of Understanding of the years 1999 or 2003 has not been given full effect for*

last fifteen to eighteen years for dividing the Company into three different Companies except the administrative control, separation of jurisdiction for sale of product and to keep separate accounts. For the said reasons, no specific weightage can be given to one or other unit except the interest of the Company for passing order under Section 242(4). The impugned order dated 2nd August, 2018 being in the interest of the Company, no interference is called for. However, in view of the submission made by the parties and in the interest of the Company, we pass the following order in addition to the impugned order passed by the Tribunal.

- i. The Board of Directors of the Company while facilitating the 'Sonepat Unit' in production to achieve optimum level may infuse funds for 'Sonepat Unit' to the extent it may require to achieve the production to optimum level. If the Company infuse any fund, it will be entitled to get the amount back from the 'Sonepat Unit' which is under the control of the contesting Respondents. In such case, the contesting Respondents will ensure that the amount infused by the*

Company in the 'Sonepat Unit' is returned as per terms and conditions, if any.

- ii. The cheques on behalf of 'Sonepat Unit' of the Company shall be signed by the Authorised person/Director of the 'Sonepat Unit' along with one of the authorised representative of the Company. For the purpose of such signature, the Company may either authorise any of its representative already posted in the 'Sonepat Unit' or may post any of its representative to ensure joint signatures on the cheque for payment in favour of workmen, employees, suppliers or raw materials, other creditors, electricity charges, water charges, tax etc.*
- iii. Till 'Sonepat Unit' achieve optimum level of production, it will be open to the Board of Directors of the Company to make available the products, such as cycles and other parts to 'Sonepat Unit' from other units for meeting the demand and supply in the market which is under the*

control of 'Sonepat Unit'. 'Sonepat Unit', in its turn, will keep an account of the products, such as cycles and other parts received from other units and after sale of such products will report the same to the Company as also the unit(s) from which the products such as cycles and its parts are supplied. The 'Sonepat Unit' will not sell any product such as cycles and its parts supplied by other units on credit. The 'Sonepat Unit' will transfer the amount generated from sale of product of other units to the unit concerned within 30 days of sale failing which, in default the present order passed by this Appellate Tribunal and order passed by the National Company Law Tribunal shall stand vacated.

- iv. Appropriate adjustment in the books of accounts should be maintained by the 'Sonepat Unit' with regard to products received from other units and it will communicate the month wise sale to the Company and unit concerned.*

- v. *The ‘Sonepat Unit’ and the contesting Respondents who are in control of ‘Sonepat Unit’ will furnish all details as may be sought for by the Board of Directors of the Company relating to fund flow from the Government order and utilization thereof as has been ordered by the Tribunal.*
- vi. *It is needless to say that the rest part of the order passed by the Tribunal relating to continuity to the operation of the orders dated 24th August, 2015 and 7th September, 2015 and suspension of resolution dated 13th August, 2015 and the order of abeyance relating to resolution dated 14th December, 2017 and 24th February, 2018 shall continue till the final disposal of the Company Petition.*

The appeals stand disposed of with aforesaid observations and directions.”

23. Learned counsel appearing on behalf of the Appellant submitted that the Tribunal has erroneously observed that no funds have been infused in ‘Sonepat Unit’. Firstly, in the order passed by this Appellate

Tribunal on 28th August, 2018, the infusion of funds into 'Sonepat Unit' was optional and not mandatory. Secondly, the infusion of funds into 'Sonepat Unit' is possible only through sale of non-core assets as the Appellant has no independent source of funds. At the instance of the Board of Directors, the 'Sahibabad Unit' has already contributed a sum of Rs. 32.62 Crores towards payment of outstanding liabilities of 'Sonepat Unit' between 1st December, 2017 to 31st March, 2019, out of which, a sum of Rs. 8.92 Crores was contributed between 28th August, 2018 to 31st March, 2019 i.e. since the date of passing of the order dated 28th August, 2018 passed by this Appellate Tribunal in the earlier appeals.

24. It is further submitted that the prayer for sale of non-core assets acquires significance for more purposive interpretation of the directions made by this Appellate Tribunal vide order dated 28th August, 2018.

25. It is submitted that the Tribunal erroneously observed that no supplies were made to 'Sonepat Unit' in pursuance of the order dated 28th August, 2018. The Board passed a resolution dated 29th August, 2018 directing the other unit to supply to 'Sonepat Unit'. However, the 1st Respondent asked the bicycles to be supplied at Marginal Cost vide communication dated 11th September, 2018 contrary to the terms of the order. An appropriate reply dated 12th September, 2018 was sent by the Board of Directors and another communication dated 18th September, 2018 was sent by 'Sahibabad Unit' forwarding price lists, etc.

26. Therefore, according to the Appellant, the Tribunal erroneously observed that no material has been placed on record to establish that the

Company has no funds. It is submitted that the Tribunal failed to take note of the following facts:

- a. Bank position as on 31st March, 2019.
 - i. Sanctioned limit - Rs. 19 crores
 - ii. Drawing power— Rs. 18.54 crores
 - iii. Availed limits - Rs. 18.14 crores
- b. All mutual funds exhausted except for a small art fund of Rs. 50 lakhs which is sub judice.
- c. Payments to suppliers overdue, more than 60 days - Rs. 57 crores.
- d. Position of funds as on 31st December, 2018 can be seen from the Letter dated 25th January, 2019 sent by statutory auditors stating that all mutual funds and other investments have been redeemed by 'Sahibabad unit'.

27. Learned counsel for the Appellant submitted that the Tribunal completely ignored the fact that A) all mutual funds and investments available had already been liquidated; B) all bank limits were fully exhausted; and C) no other funds available with the company to improve the liquidity. Thus, the observation of the Tribunal that the financial stringency was a bogey is ex facie erroneous.

28. It was submitted that the Tribunal noted the reasons and justifications for sale of non-core assets in Para 5 of the impugned

order but none of the contentions raised by the Appellant and noted in Para 5 have been dealt with in the impugned order. The Tribunal completely erred in holding that since the non-core assets of 'Malanpur Unit' are in the process of being sold, the sale proceeds are likely to be utilized for one purpose or the other. The proposed utilization of the funds to be generated through sale of the said asset has already been placed on record.

29. It is submitted that the Appellant has provided proposed utilization of the funds to be generated through sale of non-core assets and sale of 'Bawal Land' and detail outstanding of the company as of today to the vendors, as stated below:

“1. **Proposed utilization of the funds to be generated through sale of non-core assets**

<i>Amount likely to be realized through the said sale of non-core assets</i>	<i>Rs.27crores</i>
<i>Amount proposed to be paid to the consortium banks as a precondition for obtaining the title deeds of the said non-core assets as the same are held by the banks as collateral security for the financial assistance extended to the company. Payment of Rs. 15 crores to the consortium banks shall also scale down the utilized limit of the company and thus reduce the exposure of the company by Rs. 15 crores and thus reduce the liability of the company (pertaining to Sonapat unit).</i>	<i>Rs. 15 crores</i>
<i>Amount proposed to be utilized by the company towards liquidation of liabilities to the vendors in a phased manner and statutory liabilities pertaining to Sonapat unit.</i>	<i>Rs. 12 crores</i>

2. **Sale of Bawal Land**

The land in question was earlier utilized for 'Atlas Steel Tube Industries' which was shut down in 2014 and was being managed by Management Committee of

'Malanpur Unit'. The permission for sale of the said asset was granted by the Tribunal vide order dated 12th August, 2018 in C.A. No. 842 (PB)/ 2018.

Proposed utilization of the sale proceeds

The amount likely to be realized through the sale of said asset	Rs.35.00 Cr
Amount proposed to be paid to the Consortium bankers as a condition for release of the title deeds of the said property as the same are held by the banks as collateral security for the financial assistance extended to the company	Rs. 20.00 Cr
Amount liable to be paid back to M/s. AGR Steel Strips Pvt. Ltd. towards refund of advance received by Atlas against proposed sale of said asset to M/s. AGR Steel Strips Pvt. Ltd. in 2012. AGR has a lien on the said property till the amount of advance alongwith interest is not refunded to AGR.	Rs. 13.00 Cr
Brokerage	Rs.0.82 Cr
TDS	Rs. 0.35Cr
Dues of HSIIDC, part refund to AGR Steel Strips and repayment of fixed deposits etc	Rs. 2.00 Cr

The amount of Rs. 2 crores that was received as advance has already been utilized for payment of dues of HSIIDC, part refund to AGR Steel Strips and repayment of fixed deposits.

3. Total outstanding of the company as of today to the vendors is as under:

a. For supplies made to 'Sonepat Unit - About Rs. 25 crores

- i. No. of vendors who have filed applications under IBC - 12
- ii. Amount claimed by the vendors who have filed applications under IBC -
Rs. 10.39 crores
- iii. No. of vendors who have filed complaints under 'Negotiable Instruments Act' - 4
- iv. Amount covered in complaints filed under 'Negotiable Instruments Act' -
About Rs. 80 lakhs

v. *Salary, Wages, PF and other statutory liabilities pertaining to 'Sonepat Unit' - Rs. 1.00 Crore (Approx.)*

vi. *Besides the legal proceedings pending under 'IBC' and 'NI Act', there are various notices received under 'IBC', 'NI Act' and 'MSME Act' which have still not culminated into legal proceedings and such proceedings maybe in the pipeline. (Amount covered under such notices is in excess of Rs. 6 crores)*

b. Sahibabad unit

Payments due to vendors is over Rs. 120 crores out of which payment that is overdue beyond the 60 days normal credit period is Rs. 57 crores.

c. Malanpur unit

Payment due to vendors is around Rs. 10 crores."

30. According to counsel for the 1st & 2nd Respondents, 'Atlas Cycle (Haryana) Limited' is a closely held Company in the nature of a quasi-partnership Company amongst the three groups of the Kapur family. The 'Atlas Cycles (Sonepat) Limited', 'Atlas Cycles (Malanpur) Limited' and 'Atlas Cycles (Sahibabad) Limited' are wholly owned subsidiaries of Appellate No.1 Company. However, there is nothing on the record to suggest that 'Atlas Cycle (Haryana) Limited' has any subsidiary company nor anything on the record that company in the name of 'Atlas Cycles (Sonepat) Limited', 'Atlas Cycles (Malanpur) Limited' and 'Atlas Cycles (Sahibabad) Limited' have been registered under the Companies Act or treated to be a subsidiary of the Appellant No.1 Company. The purpose of demerger of business pursuant to the 'Memorandum of Understanding' has failed, as noticed in a preceding paragraph. Pursuant to the 'Memorandum of Understanding', the Arbitration Proceedings is initiated, in which order of award was passed but set aside by the Hon'ble High Court and the matter is pending consideration before the

Hon'ble High Court under Section 37 of the 'Arbitration & Conciliation Act, 1996'.

31. Therefore, the aforesaid plea taken by 1st & 2nd Respondents ('Petitioners' before the Tribunal) also cannot be accepted as they had not filed any reply affidavit nor taken any plea that there are three separate subsidiary Companies as discussed above. If there are three different Companies, then Insolvency Proceeding will be initiated against one of them such as 'Atlas Cycles (Sonapat) Limited'. However, for non-payment of dues in absence of separate Companies, the Insolvency Proceeding will be initiated against Appellant No.1 Company- 'Atlas Cycle (Haryana) Limited'.

32. The other plea taken by 1st & 2nd Respondents is that the Appellants created obstacles and, therefore, the application was filed by 'Sonapat Unit' against the Board Resolutions but from the record, we find that the application under Sections 241-242 of the Companies Act, 2013 was filed with prayer for demerger by 1st & 2nd Respondents in their individual capacity (as petitioners) and not by so called 'Atlas Cycles (Sonapat) Limited' or 'Sonapat Unit'.

33. The 1st & 2nd Respondents ('Petitioners' before the Tribunal) have alleged obstacles created by Board of Directors, as detailed below:

- (i) 'Malanpur Unit' of the Company was shut in 2014. Banks recovered the liabilities of the 'Malanpur Unit' from the Bank accounts of the 'Sonapat Unit' due to which the credit limits of the 'Sonapat Unit' were exhausted and the unit was left with no

working capital to run the operations of the unit smoothly. The Sahibabad Unit serves all the territories of 'Malanpur Unit' and takes all the profits despite the fact that 'Sonepat Unit' paid the liabilities equally.

(ii) The Board of Directors has time and again passed Board Resolutions and has suspended the financial powers of the 'Sonepat Unit'. Vide Board Resolutions dated 6th April, 2015, 13th August, 2015, 14th December, 2017 and 24th February, 2018, the Board of Directors suspended the financial powers of the 'Sonepat Unit' against the Order dated 7th September, 2015, vide which the erstwhile Company Law Board suspended the Board Resolution till the final hearing of the Petition.

(iii) The 'Sonepat Unit' is shut since March, 2018 because of the Board Resolutions passed by the Board of Directors. The Unit was flourishing and had successfully completed tenders received from the Government of Gujarat to supply 1,25,000 cycles worth Rs. 32 Crores and another tender of 1,13,000 cycles of Rs. 32 Crores from the Government of Rajasthan in the year 2017-2018.

(iv) In 2016, the 'Sonepat Unit' applied to Consortium Banks to revise the limits which were approved by the Banks. 'Sonepat Unit' requested the Board of Directors to pass board Resolution approval of sanction of the revised limits by the Banks.

(v) However, the Board of Directors refused and instead wrote a letter dated 8th June, 2016 to the bankers, withdrawing the loan applications of the 'Sonepat Unit' to choke the financial working of the 'Sonepat Unit'. Furthermore, Board of Directors allowed 'Sahibabad Unit' to avail short term loan of 20 crores against its non-core assets but refused to allow 'Sonepat' to avail the same. Letters written to Board of Directors to avail bridge loan of Rs. 15 Crores but to no avail.

34. The Respondents have further taken plea that the Company Petition is pending before the Tribunal, Principal Bench and the matter is listed for hearing. The Company Petition will become infructuous if the Appellants are allowed to sell non-core assets of the 'Sonepat Unit'.

35. It is submitted that the 'Sonepat Unit' is seeking for a demerger of the Unit as per the 'Memorandum of Understanding' and 'Board Resolutions'. Non- Core Assets of the 'Sonepat Unit' are the only assets of the Unit. The Board of Directors was permitted to sell only the 'Bawal Unit' and the sale proceeds were to be infused in the 'Sonepat Unit' so that the Unit starts manufacturing again and further to repay the 'Operational Creditors'. The Board of Directors instead of infusing the said funds in the 'Sonepat Unit' and or repaying Rs. 11 Crores to the 'Operational Creditors' have changed their stand before this Appellate Tribunal.

36. It is accepted that 'AGR Steel Strips Pvt Ltd.' had only advanced Rs. 6.37 crores to the Company in 2012. Since it is outstanding since the year

2012 and there is no urgency to pay the same and the Board of Directors should prioritise in repaying the funds due under IBC.

37. It is stated that Non- Core Assets of the 'Sonepat Unit' includes properties which have already been sold to the Trusts of the 'Sonepat Unit', and the payments have been received by the Board of Directors and the matter is currently pending before the Hon'ble Delhi High Court. It is informed that the Board of Directors have not approached the Banks for sale of Non- core assets and no condition has been imposed by the Bank to adjust Rs. 15 Crores as the Tribunal dismissed the application for sale of Non- Core assets.

38. 1st & 2nd Respondents have shown another option and taken plea that instead of paying to 'AGR Steel Strips Pvt. Ltd.' shall utilise the sale proceeds from 'Bawal' to repay Rs. 11 Crores to the 'Operational Creditors' under 'I&B Code'. It is further stated that 4th Respondent made some unauthorised withdrawals of appox. Rs. 15 Crores in his name in the year 2012-2013.

39. However, we are not inclined to decide the aforesaid question of withdrawal of any amount of one or other person and it is not possible for this Appellate Tribunal, at this stage, to decide the amount of sale proceeds from 'Bawal' should be utilized for payment to the 'Operational Creditors' or to 'AGR Steel Strips Pvt. Ltd.'.

40. 1st & 2nd Respondents ('Appellants' herein) have not denied the fact that the 'Financial Creditors' and the 'Operational Creditors' have already moved for 'Corporate Insolvency Resolution Process' against 'Atlas Cycle

(Haryana) Limited’ and not against ‘Atlas Cycles (Sonepat) Limited’ for dues payable by ‘Sonepat Unit’ to the ‘Operational Creditors’. If the ‘Corporate Insolvency Resolution Process’ once admitted, the Board of Directors will be suspended and in that case not only the Appellant No.1 Company will suffer but all the members including 1st & 2nd Respondents and in such case, the Company Petition (preferred by 1st & 2nd Respondents) will become infructuous.

41. In a petition under Sections 241-242 of the Companies Act, 2013 (earlier Sections 397-398 of the Companies Act, 1956), the Tribunal has power to pass interim order in terms of sub-section (4) of Section 242, which reads as follows:

“242. Powers of Tribunal. —.....(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company’s affairs upon such terms and conditions as appear to it to be just and equitable.”

42. From the aforesaid provision, it is clear that the Tribunal can make any interim order which it thinks fit for **regulating the conduct of the company’s affairs upon such terms and conditions as appear to it to be just and equitable.**

43. It is the wisdom of the Board of Directors to decide whether sale of non-core assets ought to be made or not. It was the duty of the Tribunal to notice that impending threat of an ‘I&B Code’ petition being admitted against the Company cannot be undermined. It is not

in dispute that there are more than ten 'I&B Code' petitions in which the company has received notice and all petitions (except one) pertain to the liabilities of 'Sonepat Unit' qua vendors. Interest of more than 12,000 shareholders is at stake and a perfectly solvent company having the distinction of a market leader may be pushed to insolvency due to a baseless dispute created by one promoter group.

44. If the Board of Directors on perusal of the record finds that there is no money payable or receivable to pay to the 'Operational Creditors'/ 'Financial Creditors' to save it from initiation of the 'Corporate Insolvency Resolution Process', the Tribunal or this Appellate Tribunal cannot go into commercial wisdom and financial matrix of the Company to decide whether a particular asset or one or other asset is required to be sold to satisfy the liabilities of the company ('Atlas Cycle (Haryana) Limited') including the liabilities of 'Sonepat Unit' qua vendors. If the salvation for the company is improving liquidity through sale of non-performing assets of the company including the non-core assets that were proposed to be sold and servicing the territory, it is not open for the Tribunal or this Appellate Tribunal to prohibit the company from taking such decision i.e. from initiation of 'Corporate Insolvency Resolution Process'.

45. From bare perusal of Section 241 if read with Section 242 of the Companies Act, 2013, it will be clear that on an application made under Section 241, if the Tribunal is of the opinion that company's affairs have been or are being conducted in a manner prejudicial to the interest of the company and **that to wind up the company would unfairly prejudice such member or members**, but that otherwise the facts would justify the

making of a winding-up order on the ground that it was just and equitable that the company should be wound-up, in such case, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

46. The purpose of Section 241 read with Section 242 of the Companies Act, 2013 is to save the company from winding up even if the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest. The essence of Sections 241 & 242 will be defeated if during the pendency of the petition, the 'Operational Creditors' or 'Financial Creditors' are allowed to trigger 'Corporate Insolvency Resolution Process' itself. The Tribunal while dealing with the matter failed to notice the aforesaid fact. We are of the view that it is a fit case in which the Board of Directors should be allowed to take its own decision as to how it will meet its end for meeting the liabilities of the 'Operational Creditors' / 'Financial Creditors' and whether the liability is of one or other unit including 'Sonepat Unit' and we, accordingly, allow the Board of Directors to take such decision to save the company from initiation of the 'Corporate Insolvency Resolution Process' and not for other purpose.

47. In the result, the impugned order dated 14th February, 2019 is set aside. The appeal is allowed with aforesaid liberty. However, if the amount is utilized for any other purpose than meeting the liability of the 'Operational Creditors' / 'Financial Creditors' or for revival of the 'Sonepat Unit', it will be open to 1st & 2nd Respondents to bring the aforesaid fact to the notice of this Appellate Tribunal for appropriate order.

The appeal is allowed with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

2nd July, 2019

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