

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 181 of 2017

IN THE MATTER OF:

1. **Shri Hem Raj Singh,**
S/o Shri Bhim Singh,
R/o Naraingarh Sugar Mills Limited,
Tehsil Naraingarh, Ambala, Haryana
Presently at C-8/74, Yamuna Vihar
New Delhi- 110 053 .. Appellant

Versus

1. **Naraingarh Distillery Limited,**
Having its Registered Office at
39, Sector- 5-A
Chandigarh
2. **Shri Baldev Singh Kang,**
Son of Shri
Resident of 39, Sector 5A,
Chandigarh
3. **Ms. Ravinder Kaur Kang**
Wife of Shri Baldev Singh Kang
Resident of 39, Sector 5A,
Chandigarh
4. **Ms. Deep Kamal**
D/o Baldev Singh Kang
R/o 39, Sector 5A
Chandigarh
- 5(a) **Smt. Renu Anand**
W/o Late Shri Onkar Anand
R/o House No. 135,
Sector-7, Panchkula-134109
Haryana

- 5(b) **Shri Rahul Anand**
S/o Late Shri Onkar Anand
R/o House No. 135,
Sector-7, Panchkula-134109
Haryana
- 5(c) **Ms. Bhavna Anand**
D/o Late Shri Onkar Anand
R/o House No. 135,
Sector-7, Panchkula-134109
Haryana
6. **Smt. Renu Anand**
W/o of Late Shri Onkar Anand
R/o House No. 135,
Sector-7, Panchkula-134109
Haryana
7. **Shri Jitendra Anand**
S/o late Shri G.L. anand
R/o F-143,
NOIDA (U.P.)
8. **Shri Rahul Anand**
S/o Late Shri Onkar Anand
R/o House No. 135,
Sector-7, Panchkula-134109
Haryana
9. **Ms. Bhavna Anand**
D/o Late Shri Onkar Anand
R/o House No. 135,
Sector-7, Panchkula-134109
Haryana
10. **The Registrar of Companies,**
NCT of Delhi & Haryana
IFCI Tower, 5th Floor, Nehru Place,
New Delhi – 110 019
11. **The Regional Director,**
Ministry of Corporate Affairs,
Northern Region,
B-2 Wingh, 2nd Floor
Paryavaran Bhawan,
CGO Complex,
New Delhi- 110 003

...Respondents

Present:

For Appellant:

Shri Rakesh Kumar with Shri P.K. Sachdeva Advocates

For Respondent Nos. 2 to 4:

Shri Sudershan Goel and Shri Ankush Diwan, Advocates

For Respondent Nos. 1 & 5 to 9:

**Ms. Anupama Kumar and Shri Hrishikesh Baruah,
Advocates.**

Judgement

(14th November, 2017)

A.I.S. Cheema, J:

The Appellant filed Company Petition No. 128/2007 against the Respondents No. 2 to 4 (hereinafter referred to as '**Original Respondents**') under Sections 397, 398, 399 read with Section 402, 403 & 406 of the Companies Act 1956 ('**Old Act**' in brief). The Company was arrayed as Respondent No. 1. During the pendency of the petition due to developments pending litigation, one Onkar Anand was added as Respondent no. 5 and Respondents Nos. 6 to 9 were also added as party Respondents. On the death of Onkar Anand, his Legal Representatives are on record (these Respondent Nos. 5(a) to 5(c) and Respondent No. 6 to 9 are hereinafter referred as '**added Respondents**').

2. The petition was initially filed before the Company Law Board and subsequently came to be transferred to National Company Law Tribunal, Chandigarh Bench, (Chandigarh (hereinafter referred as '**NCLT**'). The Chandigarh Bench, after hearing the matter, dismissed the Company Petition and disposed of pending Misc. Applications referred by it in the impugned order dated 07.04.2017. Hence the present appeal.

3. In short the Appellant-Original Petitioner claims as follows:

The Respondent No. 1 –Company was engaged in distillery business on a 45 acres of land. The Appellant was promoter/director and became Managing Director on 01.09.2004. The Appellant and Respondent No. 2 were jointly carrying on several other businesses also. The Appellant was holding 9600 shares in the Company consisting of 19.2 percentage equity. The Appellant and Respondent No. 2 were connected in running of the company – “Naraingarh Sugar Mills Ltd.” Some disputes arose in it and Respondent no. 2 filed FIR against the Appellant because of which the Appellant was put behind the bar. When the Appellant was behind the bar, in the year 2006, Original Respondent Nos. 2 convened Extraordinary General Meeting (in short '**EGM**') on 31.05.2006 for the removal of the Appellant from the post of Managing Director. Without notice to the Appellant, who was behind bar and in his absence, the EGM (The document in this regard at page 517-Vol. III mentions it as “Annual General Meeting”) was held and the Appellant was illegally removed as Managing Director. Appellant got bail in July, 2006 and when he came to know that he had

been removed as Managing Director and his role in the affairs of the Company had been limited, he filed a Company Petition claiming that without following due procedures under Section 284 of the Old Act, he had been illegally removed. There was no special notice given to him or a chance to respond as required under Section 284 of the Old Act. The Original Respondents had fraudulently appointed two other Directors to gain strength in the Board of Directors.

4. The Appellant claims that when the Company Petition was filed, it was taken up before the Company Law Board and the Company Law Board passed order of 'status quo' on 11.09.2007 regarding immovable property and shareholding. When the petition came up for hearing in 2013, the Appellant learned that in spite of the stay to maintain status quo regarding immovable property and shareholding of the company, the Original Respondents had changed the shareholding and the managing control had been given to third parties i.e., added Respondents violating the status quo order. Consequently, the Appellant brought on record the added respondents. He amended the petition to challenge the subsequent transfer of shareholding and further allotment of shares to the added Respondents. The shareholding had been changed in a manner that 19.2 percent shareholding of the Appellant got reduced to 1.12 percent shareholding.

5. The Appellant claims that subsequently in the Tribunal below the Original Respondents started claiming that the added Respondents were

nobody as although understanding was arrived at between the Respondents to give control of Respondent No. 1 in favour of the added Respondents through MOU, but as added Respondents did not pay consideration and so they could not be given any indulgence. When the petition came up before the learned NCLT, the petition came to be dismissed.

6. The learned Counsel for the Appellant submitted that the Respondent No. 1-Company was a sort of quasi-partnership between the Appellant and Respondent Nos. 2 to 4. The Respondent No. 2 managed to send the Appellant behind the bars by filing criminal cases and when the Appellant was behind the bar, the Respondent No. 2 to 4 convened EGM of the Company on 31.05.2006 in which meeting the Appellant was removed from the post of Managing Director and one Shri Jagnu Kang and Shri Jai Inder Singh came to be appointed as Directors. It is stated that the removal was in complete contravention of Section 284 of the Old Act as no specific notice was served upon the Appellant as per sub-clause 2 to 4 of Section 284 of the Old Act. The Company Law Board had passed order of status quo on 11.09.2009 and status quo order was relating to fixed assets and shareholding of the company. This order, however, was violated by Respondent Nos. 2 to 4 and they transferred their shareholding to Respondents No. 5 to 9. Subsequently, 7,56,800 equity shares were allotted in favour of the added Respondents diluting the shareholding of the Appellant from 19.2 to 1.12 percent. The transfer of shareholding reflected in the Annual Return of 2012 because of which original petition was required to be amended. The added Respondents had, before the Company

Law Board, expressed readiness to buy undisputed shareholding of the 19.2 percent of the Appellant but the effort did not succeed. The Appellant submitted that the Learned NCLT although it noticed that the Appellant was illegally removed as Managing Director, still it went on to hold that there was no case of oppression. The acts of the Respondents were clearly in violation of the status quo order which has been passed and according to the learned Counsel for the Appellant, oppression of Appellant and mismanagement of the Company affairs was apparent on the record. According to the learned Counsel for the Appellant, the acts of the Respondents in contravention of the status quo order must be held to be illegal and need to be quashed and set aside. The learned Counsel for the Appellant stated that the main issues now are that illegal removal of the Appellant as Managing Director and the act of violation of the status quo order by the Respondents.

7. At the time of the argument, the learned Counsel for the original Respondent Nos. 2 to 4 was unable to show that the notice of the EGM dated 31.05.2006 was served on the Appellant. It was only stated that the notice was published in newspapers. It was not disputed by the learned Counsel that at the concerned time, the Appellant was in jail due to FIR lodged by Respondent No. 2. In the argument, the learned Counsel for the original Respondent No. 2 to 4 claimed that these Respondents had not transferred their share to Respondent Nos. 5 to 9.

8. Against this, the learned Counsel for the added Respondent No. 5(a) to 5(c) and 6 to 9 submitted that contentions raised by the Appellants are misplaced. It is stated that the Appellant alleged that he came to know about the allotment of shares to the added Respondents in 2013 and he had filed Contempt Petition before the Punjab & Haryana High Court. Reference is made to C.O.C.P 902/2013, copy of which is placed at page nos. 758 to 774 of Vol. III of the Paper Book. It is stated that after filing of the Contempt Petition, the Appellant settled the dispute with the Original Respondent Nos. 1 to 4 and entered into an agreement and on the basis of the said compromise, the Contempt Petition came to be withdrawn and various other proceedings were also quashed. It is stated that the Appellant took benefit of the said settlement (copy of which is at pages 623-624 of Vol. III of the Paper Book) and thus he cannot be permitted to take a contrary position as far as this Company Petition is concerned. According to these Respondents, the present petition was bound to be withdrawn by the Petitioner/Appellant. When the petition was filed, the only grievance was wrongful removal of Managing Director, which could not have been said to be an act of oppression. Notice to the Appellant was issued before he was removed as Managing Director. It is claimed that the Appellant only wanted to exit but he did not want to exit on reasonable terms. It is alleged that the original Respondent No. 2 to 4 had colluded with the Appellant as can be seen from Application which was filed as C.A. No. 16/2016 which came to be rejected. The learned NCLT held that dispute inter se the Respondents is not subject matter of the Company Petition and it will be adjudicated in

Civil Suit No. 1998/2015 before the Civil Judge, Chandigarh. These Respondents support the impugned judgement passed and want Appeal to be dismissed.

9. At the time of argument, the learned Counsel for the added Respondents claimed that notice had been issued to the Appellant about the meeting of 31.05.2006 and thus, Appellant could not make any grievances. When the learned Counsel was asked to show service of the notice, he referred to notice published in the newspapers. Learned Counsel pointed out the copies of the newspaper at pages 570-571 (in Vol. III of the Paper Book) to support his submission. When we perused these notices published in the newspapers, it was seen that the copy at page No. 570 purporting to be cutting of "Indian Express" dated 17.05.2006 gave notice of Annual General Meeting of "Naraingarh Sugar Mills Limited" called on 31.05.2006. Similar is the fate of notice published in vernacular "Din Pratidin" dated 18.05.2006 at page no. 571 which also relates to "Naraingarh Sugar Mills Limited". We are concerned with the removal of Appellant from "Naraingarh Distillery Ltd" and not "Naraingarh Sugar Mills Limited". Learned Counsel for added respondents could not show any other Newspaper cutting. One copy of the notice dated 05.05.2006 has been filed as Annexure-R16 (page no. 578 of Vol.-II of the Paper Book) issued by Respondent No. 2 claiming that requisition from M/s United Vanaspati Limited holding more than 1/20th of the total equity voting power in the Company has been received. Even this notice relates to Naraingarh Sugar

Mills Limited. Respondents have not been able to show notice served on the Appellant seeking his removal from the post of Managing Director in the Respondent No. 1- Naraingarh Distillery Limited.

10. The impugned order in much details referred to the pleadings of the parties and observed:

.....

*“14.4 The main issue before us is oppression and mismanagement as alleged by the Petitioner. The main instance of oppression and mismanagement cited by him in both the original and amended petitions is his removal as Managing Director. Respectfully following the Supreme Court’s Judgement in the case of **Hanuman Prasad Bagri** (supra), we hold that removal as Managing Director is not a subject matter of oppression and mismanagement u/s 397 and 398 of the Companies Act, 1956. The other instances cited in both the original and amended petitions namely, not being given a notice of meeting dated 8.4.2006 and AGM dated 31.5.2006 as well as filing of criminal complaints against him by the original Respondents are not considered as instances of O&M. We say so because of notices of meeting dated 8.4.2006 and AGM dated 31.5.2006 were published in the newspapers as filed by the original Respondents in their written submissions but, the Petitioner may not be aware of the same as he was behind bars in the criminal complaints filed against him by R-2 and another. There appears to be some substance in these criminal*

complaints as the Petitioner was behind bars for 3 months till bail was granted in the complaint filed by another namely, A.K. Thakur. The Petitioner was acquitted in these cases, as they were quashed after the compromise/settlement agreement between R-2 and the Petitioner.”

(Emphasis supplied)

It is apparent that the learned NCLT did notice that no specific notice was served on the Appellant, who was apparently behind the bars at the concerned time. The learned NCLT, without going through the contents of the newspapers (as pointed out above) observed that the notice was published in the newspapers and “Petitioner may not be aware of the same as he was behind the bars in the criminal complaints filed against him by R-2 and another.” Had the learned NCLT read what was put in the newspaper, (which we have mentioned above and which has been pointed out to us as the notice published in the newspaper) the learned NCLT would have known that these notices did not relate to the Respondent No. 1-Company. The fact remains that the Respondent No. 2 filed criminal case against the Appellant and when the Appellant was behind the bars, he called a meeting and unceremoniously Appellant was removed. The record also shows that original Respondent Nos. 2 to 4, in violation of the status quo order, transferred their shares to the added Respondents and it also appears that subsequent shareholding itself of the company was increased and the Appellant with his 9600 shares was reduced to minority.

11. The impugned order has reproduced from the amended petition, what reflected in the Annual Return of 2012 of the Respondent No. 1- Company as under:-

“Directorship Pattern of the Respondent No. 1 Company”

| <i>Sl. No.</i> | <i>Name of the Director</i> | <i>Date of appointment</i> |
|----------------|-----------------------------|----------------------------|
| 1. | <i>Onkar Anand</i> | <i>01.04.2009</i> |
| 2. | <i>Jitendra Anand</i> | <i>01.04.2009</i> |
| 3. | <i>Renu Anand</i> | <i>01.04.2009</i> |

Shareholding Pattern of the Respondent No. 1 Company

| <i>Sl. No.</i> | <i>Name</i> | <i>Number of Shares held.</i> |
|----------------|---------------------------|-------------------------------|
| 1. | <i>Hem Raj Singh</i> | <i>9600</i> |
| 2. | <i>Rakesh Yadav</i> | <i>100</i> |
| 3. | <i>Anurag Sharma</i> | <i>100</i> |
| 4. | <i>Lokesh Kumar Singh</i> | <i>100</i> |
| 5. | <i>Onkar Anand</i> | <i>746667</i> |
| 6. | <i>Renu Anand</i> | <i>12500</i> |
| 7. | <i>Jitendra Anand</i> | <i>11733</i> |
| 8. | <i>Rahul Anand</i> | <i>10000</i> |
| 9. | <i>Bhavna Anand</i> | <i>10000</i> |
| | <i>Total</i> | <i>800800”</i> |

The Appellant also pointed out the Directorship and shareholding pattern as was appearing in the Annual Return of R-1 Company on

30.09.2006 (which would be just after the subsequent order which has been passed on 11.09.2007) as under (which also is reproduced in Impugned Order):-

“DIRECTORSHIP PATTERN OF THE COMPANY AS ON 30.09.2006”

| Sl. No. | Name | Designation | Date of Appointment | Date of Ceasing |
|---------|-------------------------|-------------------|---------------------|-----------------|
| 1. | Baldev Singh Kang | Director | 15.04.2002 | 01.09.04 |
| 2. | Hem Raj Singh | Director | 15.04.2002 | 31.05.06 |
| | | Managing Director | 01.09.2004 | 31.05.06 |
| 3. | Mrs. Ravinder Kaur Kang | Director | 15.04.2002 | |
| 4. | Ms. Deep Kamal | Director | 26.07.2004 | 31.05.06 |
| 5. | Rajesh Bhardwaj | Director | 08.04.2006 | |
| 6. | Baldev Singh Kang | Director | 05.05.2006 | |
| 7. | Jugnu Kang | Director | 31.05.2006 | |
| 8. | Jai Inder Singh Chopra | Director | 31.05.2006 | |

SHAREHOLDING PATTERN OF THE COMPANY AS ON 30.9.2006

| Sl. No. | Name | Type of Share | No. of Share | Amt. Per Share |
|---------|-------------------------|---------------|--------------|----------------|
| 1. | Baldev Singh Kang | 1 | 19700 | 10 |
| 2. | Mrs. Ravinder Kaur Kang | 1 | 20000 | 10 |
| 3. | Hem Raj Singh | 1 | 9600 | 10 |
| 4. | Rakesh Yadav | 1 | 100 | 10 |
| 5. | Anurag Sharma | 1 | 100 | 10 |
| 6. | Jyoti Kumar Singh | 1 | 100 | 10 |
| 7. | Lokesh Kumar Singh | 1 | 100 | 10 |

| | | | | |
|-----|-------------------------------|---|-----|-----|
| 8. | <i>Ms. Jugnu Kang</i> | 1 | 100 | 10 |
| 9. | <i>Rajesh Bhardwaj</i> | 1 | 100 | 10 |
| 10. | <i>Jai Inder Singh Chopra</i> | 1 | 100 | 10" |

12. It would be appropriate here to reproduce the status quo order which was passed by Company Law Board on 11.09.2007. The relevant portion is as under:-

"Petition mentioned and interim relief sought exparte.

In facts of this case, I direct the Company/ Respondents to maintain status quo as on date in regard to the immovable properties of the Company as also shareholding in and of the company"

13. If the above charts, from the two different Annual Returns pointed out by the Appellant are considered, it is obvious that in spite of the status quo orders Directors have changed and shareholding in the company has been considerably changed. Not only the Respondent Nos. 2 to 4 transferred their shares to added Respondents but the shareholding in the company was also increased. The charts show control of the Company itself has changed in the face of status quo orders.

14. It is argued by the learned Counsel for the added Respondents that the Appellant and original Respondents had entered into agreement and in view of that the Contempt Petition filed in the High Court came to be disposed. We find that even if subsequently the Appellant and original Respondents entered into agreement which lead to withdrawal of the

Contempt Petition filed in the High Court, by that itself the contempt does not get purged and illegal act committed in violation of the status quo order referred above, cannot be ignored. Looking to the disputes between the parties, as raised before us, it is obvious that now even the original Respondent Nos. 2 to 4 and added Respondents are quarrelling between them and the Appellant has been struggling since the time of filing of the Company Petition to get back his rights and there is a state of chaos. The impugned order at para 14.3.2.3 shows that the learned NCLT observed as under:-

.....

“14.3.2.3 The original Respondents have themselves filed a copy of the MoU between R-2 and R-5 dated 01.4.2009 (reproduced at para 8.5 above) vide which it is stated that the 2nd Party (R-5) had offered to purchase the shareholding of R-2 and R-3, immovable property, licence and bottling plant of NDL at a cost of Rs. 28 crores. As per this agreement, a sum of Rs. 15 lacs was accepted by R-2 as token money, the balance amount was to be paid on fulfilment of certain conditions. The condition of final conclusion of the contract is that “the contract shall be concluded as soon as the order of status quo is vacated by the Company Law Board, in the case filed by Hemraj or the case is finally decided.” It is seen that the original respondents did not file any suit for specific performance of the alleged MoU dated 01.4.2009. Subsequently, they have filed a suit in Civil Court at Chandigarh against the new respondents.”

(Emphasis supplied)

15. It is clear that the Respondents knew about the Status Quo Order and pending petition. Still they entered into the MoU and took steps under the same. Disputes inter say the two groups of Respondents later on arose because it appears that original Respondents received a sum of Rs. 15 lakhs as token money but as the balance was not paid, they have started denying the transfer of shares to added Respondents while the added Respondents appear to be in-charge of the affairs of the Company on the basis of their claim that the original Respondents did transfer their shares. It appears there has been enhancement in the shareholding also. The original Respondent Nos. 2 to 4 violated the status quo orders and transferred their shares to added Respondents and the added Respondents have continued to act in violation of Status Quo Orders and there is change of shareholding in spite of knowing that there was a Status Quo Order and the shares could not have been transferred to them.

16. It is clear that original Respondents 2 to 4 acted in an oppressive manner by taking advantage of the Appellant being sent behind the bars at the instance of the Respondent No. 2 and brought about the EGM on 31.05.2006 and illegally removed the Appellant from the post of Managing Director and in violation of the status quo order transferred their shares to added Respondents and it has further transpired that the shareholding of the Company itself has increased manifold and such acts of the Respondents clearly show that there is a grave mismanagement with these

Respondents not paying any respect to the status quo order, which were admittedly there. Para- 14.3.2.3 reproduced above from the impugned order, where reference has been made to the agreement between these respondents shows that in the MOU dated 01.04.2009, these Respondents were aware that they need to tide over the status quo and the contract was to be concluded when the status quo is vacated and the petition filed by the Appellant is finally decided. It is surprising, however, that the learned NCLT even after noticing such conduct of the Respondents did not hold that Respondent Nos. 2 to 4 had committed acts of oppression and mismanagement because of which now added Respondents are in control of the affairs of the Company. We find that the Company Petition was wrongly dismissed.

17. (A) For above reasons, the Appeal is allowed. The impugned judgment and order passed by learned NCLT is quashed and set aside.

(B) Transfer of shares to Respondent Nos. 5 to 9 by Respondent Nos. 2 to 4 is quashed and set aside.

(C) Allotment of additional shares to Respondent Nos. 5 to 9 are quashed and set aside. Consideration received by the Company for allotment of shares, shall be refunded within 30 days without any interest.

(D) The appointment of Respondent Nos. 5 to 7 as Directors of Respondent No. 1- Company is quashed and set aside.

(E) Status quo as on 11.09.2007, when the order of status quo by Company Law Board was passed, shall stand restored regarding Directorship and shareholding pattern.

(F) Appeal is disposed accordingly. No orders as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Balvinder Singh]
Member (Technical)

/akc/