

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 328 of 2018

IN THE MATTER OF:

Anand Gupta and Ors.

...Appellants

Vs

BDR Builders & Developers Pvt. Ltd. & Ors.

....Respondents

Present:

For Appellants: Mr. Vipul Ganda, Ms. Aastha Trivedi, Ms. Shreya Jain, Mr. Santosh Giri and Mr. Chandreyee Maitra, Advocates.

For Respondents: Mr. Arun Kathpalia and Mr. Darpan Wadhwa, Sr. Advocates with Mr. Saurabh Kirpal, Ms. Niyati Kohli and Mr. Vishnu T., Advocates for R-2&3. Mr. Rakesh Kumar and Mr. Sahil Gupta, Advocates for R-4.

ORDER

25.09.2018: This appeal has been preferred by Appellants/ Petitioners (hereinafter referred to as 'Petitioner'), who are members of the Company, 'BDR Builders & Developers Pvt. Ltd. & Ors.', against order dated 19th September, 2018 passed by National Company Law Tribunal, Special Bench, New Delhi (hereinafter referred to as 'Tribunal'), which reads as follows:

“ORDER

Heard arguments of both sides at length. The prayer for adinterim relief was pressed. The record and documents filed before us were perused and Ld. Senior Counsels of both sides took us through various pleadings filed before the Hon'ble Delhi High Court. It is seen that Hon'ble Delhi High Court has reserved orders in various cross applications filed in suits before Hon'ble Delhi High Court wherein the family settlement and acts done in pursuance of the family settlement is under challenge viz transfer of shares in the respondent No. 1 company and the dealing in immovable property of respondent No. 1 company and various other acts by the parties before us.

In these circumstances we are of the prima facie view that the issues raised before us are pending consideration of Hon'ble Delhi High Court, where even order has been reserved. In the meantime there is no need of granting any interim relief at this stage. It is felt that the matter can be properly appreciated in its entirety after pleadings are over.

Let the respondent file reply within three weeks with copy in advance to the counsel opposite.

Rejoinder, if any, be filed within two week thereafter with a copy in advance to the counsel opposite.

List for further consideration on 25th October 2018."

2. From the impugned order it is evident that the petitioners preferred application under Section 241-242 of the Companies Act, 2013 and alleged oppression and mismanagement on the part of Respondent No. 2 and 3. Prayer was made for interim relief in view of the pendency of the case before the Hon'ble Delhi High Court, wherein after hearing judgment has been reserved. However, the Tribunal refused to grant any interim relief.

3. Mr. Vipul Ganda, learned counsel appearing on behalf of the Petitioners submitted that 2nd and 3rd Respondents were executing sale deeds with regard to one or other property which give rise to the filing of application under Section 241-242 of the Companies Act, 2013 and in this background prayer was made to grant interim relief. It is submitted that if no interim relief is granted, the 2nd and 3rd Respondents may proceed with sale during the pendency of the petition. Reliance has also been placed on 'Proforma Agreement to Sell' and 'Sale Deed', which has been enclosed at page 223 to page 248 of the paper book.

4. Mr. Rakesh Kumar, learned counsel appearing on behalf of the 4th Respondent submits that the said respondent is holding 42% of the share capital of the Company. He is one of the party to the Family Settlement. 4th Respondent supported the case of the Appellant.

5. Mr. Arun Kathpalia, learned senior counsel appearing on behalf of 2nd and 3rd Respondents submits that Tribunal having noticed that similar matter is pending before Hon'ble Delhi High Court has not passed any interim order.

6. From the record we find that the Petitioners and the Contesting Respondents are brothers or nephew and other family members. The Family Settlement dated 2nd December, 2017 and 9th December, 2017 were executed between the 2nd, 3rd and 4th Respondents. It is stated that the petitioner, who is not a shareholder of the Company has not signed though he has acted upon in terms of agreements. It appears that a suit being CS(OS) No. 51 of 2018 and two other suits under Section 9 were filed by Respondent Nos. 2 and 3. In the said suit (CS(OS) No. 51 of 2018) for want of stay an interlocutory application was filed before the Hon'ble Delhi High Court. In the said case by order dated 7th February, 2018, the Hon'ble Delhi High Court taking into consideration that a prima facie case has been made out and balance of convenience is in favour of plaintiffs (Respondent No. 2 and 3 herein) passed the following order:

“ORDER
07.02.2018

IA No. 1856-57/2018 (exemption)

Allowed subject to all just exceptions.

IA No. 1855/2018 (u/S 149 CPC)

Learned senior counsel appearing for the plaintiffs states that the court fees have been deposited but the stamp papers have not been obtained and that the same will be filed within one week.

The application stands disposed of.

CS(OS) 51/2018

Let the plaint be registered as suit.

Issue summons to the defendants by speed post, ordinary process and e-mail, returnable for 21.03.2018.

IA No. 1854/2018(u/O 39 R 1 & 2 CPC)

Issue notice to the defendants by speed post, ordinary process and e-mail, returnable for 21.03.2018.

This application is filed seeking ex parte injunction to restrain the defendants from giving effect to the notices dated 19.01.2018, 24.01.2018, 25.01.2018 and 29.01.2018 issued by the defendants under Section 100 of the Companies Act.

It is pleaded by the plaintiffs that the parties to the present suit have entered into a family settlement on 02.12.2017 and 09.12.2017. Reliance is also placed on a communication received from the defendants dated 01.01.2018 where the terms of the family settlement were reiterated. The plaintiffs have accepted the contentions of the defendants vide their communication dated 03.01.2018.

Learned senior counsel for the plaintiffs has taken me through the notices now issued under Section 100 of the Companies Act. Notice dated 19.01.2018 states that plaintiffs No. 1 and 2, namely, Sh. Dinesh Gupta and Sh. Shreyansh Gupta are not fit to continue to be the directors of the Company i.e. BDR Builders and Developers Pvt. Ltd. in terms of Section 169 of the Companies Act and they will be removed as directors of the same. It is pleaded that as per the family settlement, this company i.e. BDR Builders and Developers Pvt. Ltd. falls to the share of the plaintiffs. The same is the position regarding the other notices, namely, notice dated 24.01.2018 which pertains to Able Management Consultant Pvt. Ltd., notice dated 25.01.2018 which pertains to Verma Finvest Pvt. Ltd. and notice dated 29.01.2018 which pertains to Nishit Capinvest Pvt. Ltd. All these companies, it is pleaded, in terms of the family settlement would come to the hare of the plaintiffs.

The plaintiffs have made a prima face case. Balance of convenience is in favour of the plaintiffs. The defendants are restrained from giving effect to the afore-noted notices dated 19.01.2018, 24.01.2018, 25.01.2018 and 29.01.2018 till the next date of hearing.

The plaintiffs may comply with Order 39 Rule 3 CPC within three days from today.

Dasti.”

7. We find that Petitioners No. 5 to 10 are party respondents in the said suit. In the connected suits the rest of the Respondent No. 1 to 4 are also parties. In all the suits parties have been heard under Order 39 Rule 1 & 2 of CPC and order has been reserved on 28th May, 2018.

8. It is only after filing of the suits and the interim order passed therein, the application under Section 241-242 of the Companies Act, 2013 has been preferred by the Petitioners. For said reason and the Hon'ble High Court is deciding the issue relating to Family Settlements dated 2nd December, 2017 and 9th December, 2017, the Tribunal refused to grant any interim relief at this stage and kept the order pending for decision of the Hon'ble High Court.

9. The 'BDR Builders & Developers Pvt. Ltd.' (Company) is in the business of sale and purchase and transfer of real estate properties. It is in this background they have prepared a 'draft agreement for sale' and 'draft sale deed', which was prepared much prior to filing of application under Section 241-242. Some of the sale deeds have been executed, one of which has been placed on record.

10. Section 242 (4) empowers the Tribunal to pass interim relief in an application under Section 241-242, 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.”

11. From the aforesaid provision it is clear that the Tribunal on the application of any party to the proceeding is entitle to make any order, which is fit for regulating the conduct of the Company, upon such terms and conditions as appear to it just and equitable. If the company is directed not to sale any property, which is the main business of the Company, such interim order will be against the interest of the Company. For the said reason the Tribunal refused to pass any interim order.

12. However, taking into consideration the facts and circumstances of the case and for regulating conduct of the Company affairs, we observe that any transaction made during the pendency of the Company Petition shall be subject to decision of the petition pending before the Tribunal. The appeal stands disposed of with aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk