

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 326 of 2017

IN THE MATTER OF:

1. **Uma Shankar Gupta**
for self and as Karta of K.C. Gupta (HUF)
and Uma Shankar Gupta (HUF),
residing at 5, Kabir Road,
3rd Floor, Kolkata – 700026.
2. **Shyam Sundar Gupta,**
For self and as Karta of
Shyam Sunder Gupta (HUF)
residing at 5, Kabir Road,
3rd Floor, Kolkata – 700026.

... Appellants
(Original Petitioners)

- Versus -

1. **Vishal Promoters Private Limited**
45A, Raja Basanta Roy Road,
Kolkata – 700 029.
2. **Ramdiha Mercantile Private Limited**
210, Sikkim Commerce House,
4/1, Middleton Street,
Kolkata – 700 071.
3. **May Fair Commotrade Private Limited**
9, JagmohanMullick Lane, 2nd Floor,
Kolkata – 700 007.
4. **Sumash Developer Private Limited**
Aishwarya Apartment, 5th Floor,
29A, Ballygunge Circular Road,
Kolkata – 700 019.
5. **Reality Vinimay Private Limited**
Aishwarya Apartment, 5th Floor,
29A, Ballygunge Circular Road,
Kolkata – 700 019.

6. **Steam Port Folio Management Limited**
88, College Road, Rabindranagar,
Flat No. 108, Block 'E'
Howrah - 711 103.
7. **Bengal Enterprises Private Limited**
Stephen House, Room No. 90,
5th Floor, 4, B.B.D. Bag Road (East),
Kolkata - 700 001.
8. **Kedar Nath Agarwal,**
ParmeshwariSadan,
92/93, NaliniRanjan Avenue,
New Alipore,
Kolkata - 700 053
9. **Ashok Kumar Gupta,**
Aishwarya Apartment,
5th Floor, 29A, Ballygunge
Circular Road,
Kolkata - 700 019.
10. **Prem Kumar Agarwal**
46A, Pandit Madan Mohan Malviya Lane,
Indraprastha, Flat No. 3D,
Kolkata - 700 020.
11. **Vikaram Sikaria**
Flat No. 4A, 200, Sarat Bose Road,
Kolkata - 700 029.

... Respondents

Present: Mrs. Sonal Shah with Shri Anirudh Sanganeria, Advocates
for the Appellant.

ORDER

15.11.2017 Heard learned counsel for the appellants (Original Petitioners). This appeal has been tendered by the appellants-original petitioners, who filed Company Petition being C.P. No. 294/2013 before the Learned National Company Law Tribunal, Kolkata Bench (hereinafter

referred to as 'NCLT') claiming 'oppression and mismanagement' by the respondents.

The learned NCLT, after hearing the petition, has dismissed the same on the ground that there was no 'oppression and mismanagement'.

Learned counsel for the appellants has submitted that in this matter, the respondents had called for a meeting on 14th August, 2013 with the agenda of changing the registered address of the company. According to the learned counsel, the notice of the said meeting was not served on the Appellant No. 1, Director/shareholder of the company and the learned NCLT wrongly relied on a document which purported that the notice was received by one Bipin Naskar on behalf of the appellant. According to learned counsel, this was one act of 'oppression'. She claims that the appellant had, for the same date, given notice to hold a meeting at the registered address rather than the proposed place in the notice dated 14th August, 2013 but the meeting was not held at the registered office. It is further submitted that Respondents Nos. 9 to 11 had taken loan from the company and the same was not repaid and this also amounts to an act of 'oppression'.

It is further argued that Respondent No. 11 was appointed as Additional Director in the meeting dated 14th August, 2013 and thus such appointment of the Additional Director also was another act of 'oppression'.

Learned counsel further submitted that the Appellant/Petitioner No. 1 had filed an application alleging forgery of the document of service of notice for meeting dated 14th August, 2013 and the minutes, but that application was not decided and disposed of while disposing of the company petition by the learned NCLT.

We have gone through the material which is available on record and having heard the learned counsel for the appellants, what appears is that the learned counsel is referring to the notice date 29th July, 2013 calling Board Meeting of the Board of Directors at an address of 'Room No. 90, 5th Floor, Stephen House, 4 B.B.D. Bag (E), Kolkata – 700 001'. The agenda of the meeting included subjects of change of the registered office of the company as well as appointment of Vikram Sikaria as Additional Director. The objection on this count has not been accepted by the NCLT relying on a document which was filed with the reply of the respondents (Copy of which has been filed at Page 276 of the Paper-Book). Learned counsel submits that this person, Bipin Naskar, was not connected with the appellant and the service on him could not be said to be sufficient or correct service of notice. However, we find from the impugned order that the learned NCLT has taken into consideration that even if the Appellant/Petitioner No. 1 would have attended the meeting concerned, the respondents had the necessary majority to carry the agenda and thus there is no reason why the respondents would not serve the notice.

We find substance in the reasoning of the NCLT and thus the grievances made regarding shifting of the registered office and appointment of Additional Director are not such which would require interference. Learned NCLT further noted that Respondent No. 11 had already resigned and the relief sought had become infructuous.

It appears that the company had purchased some property. Petitioner No. 1 and Respondents Nos. 8 to 10 had lent money for the same. Against such lending, shares were issued to the appellant as well as Respondents Nos. 8 to 10 and in the Board Meeting dated 20th May, 2010, Respondents Nos. 2 to 7 as nominees of Respondents Nos. 8 to 10 were issued the shares. It appears that Respondents Nos. 8 to 10 later took loan from the company and are paying interest. This loan the appellant is claiming had not been repaid and so the appellant wants cancellation of shares issued to Respondents. We find that the earlier issue of shares was a completed subject and only because subsequently Respondents Nos. 8 to 10 took loan from the company and the same has not been returned by itself cannot be calculated as 'oppression and mismanagement'.

The impugned judgement appears to be well reasoned and there is no substance in the grounds being raised and there is no reason to

entertain this appeal. The admission of the appeal is declined, and the Appeal is dismissed.

There shall be no order as to costs.

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

[Balvinder Singh]
Member (Technical)

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