NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) Nos. 397-399 of 2017

IN THE MATTER OF:

Surinder Mehta & Ors. ...Appellants

Vs.

Prime Meiden Ltd. & Ors. ...Respondents

Contempt Case (AT) No. 11 of 2017
IN
Company Appeal (AT) Nos. 397-399 of 2017

IN THE MATTER OF:

Meidensha Corporation ...Applicant/2nd Respondent

Vs.

Mr. Surinder Mehta & Anr. ...Contemnors/ Appellants

Contempt Case (AT) No. 01 of 2018
IN
Company Appeal (AT) Nos. 397-399 of 2017

IN THE MATTER OF:

Mr. Surinder Mehta & Ors. ...Applicants/ Appellants

Vs.

Meidensha Corporation & Ors. ...Contemnors/ Respondents

Contempt Case (AT) No. 16 of 2018
IN
Company Appeal (AT) Nos. 397-399 of 2017

IN THE MATTER OF:

Meidensha Corporation ...Applicant/ 2nd Respondent

Vs.

Mr. Surinder Mehta & Ors. ...Contemnors/ Appellants

Present: **For Appellants: - Mr. Rajeev Ranjan, Mr. Amarendra Sharan and Mr. Jaideep Gupta, Senior Advocates with with Mr. Krishnendu Datta, Mr. Jayant Mehta, Mr. Sanchit, Mr. Samarth Khanna, Mr. Siddharth Yadav, Mr. Rakesh Ojha, Mr. Robin Dubey, Ms. Suveni Bhagat, Mr. Nishant Bhardwaj, Mr. Ramanjit Singh, Mr. Sagar Chawla and Mr. Vpinder Singh, Advocates.**

For Respondents: - Mr. Ramji Srinivasan, Mr. Lalit Bhasin, Mr. Salman Khurshid, Mr. P.V. Kapur and Mr. U.K.Chaudhary, Senior Advocates with Mr. R.P. Singh, Mr. Abhijeet Sinha, Mr. Naveen Hegde, Mr. Lakshya Khanna, Mr. B.P. Sinha and Mr. Bunmeet Singh, Ms. Gitanjali Kapur, Ms. Anuradha Sharma, Mr. Avichal Prasad, Mr. Rohit Kochhar, Mr. Inder Raj Gill, Mr. Anurag Dayal, Mr. Himanshu Vij, Mr. Karan Malhotra, Ms. Azra Rehman, Mr. Ramanjit Singh, Mr. Siddharth Yadav, Ms. Kaveri Gupta and Mr. Lakshya Khanna, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These appeals have been preferred by the Appellants- 'Surinder Mehta and Ors.' against three different orders passed by the National

Company Law Tribunal ('Tribunal' for short), New Delhi Bench, in Company Petition No. 394(ND)/2017 dated 10th November, 2017 and 17th November, 2017 filed by 'M/s. PCI Limited & Ors.' and in Company Petition No. 369(ND)/2017 dated 23rd November, 2017 filed by 'Meidensha Corporation'.

2. By virtue of the order dated 10th November, 2017, passed in Company Petition No. 394/ND/2017, Tribunal, New Delhi, declined to interfere with the decision of the Board of Directors and observed that such decision ultimately to be approved by the shareholders, shall be given effect to.

3. Thereafter, CA No. 306 of 2017 in Company Petition No. 394/ND/2017 was filed by 'M/s. PCI Limited & Ors.' (Company)/ 'Petitioner' seeking directions that the Respondents be restrained from giving any effect to the resolution passed by the Board of Directors on 12th November, 2017. As regards another CA No. 307 of 2017, the Respondents of the said petition sought modification of the order dated 10th November, 2017. The Tribunal instead of passing any further order directed to list the matter on 1st December, 2017.

4. On 23rd November, 2017, the first order was passed by the Tribunal on an urgent application before the Bench for immediate directions to make payments towards Custom Duty and payments to other third

parties. Keeping in view the urgency, the Tribunal kept the matter for hearing on interim relief at 4.00 p.m.

5. At 4.00 p.m., the Tribunal in its subsequent order on 23rd November, 2017, discussed the relevant facts and passed the following directions:

> *"8. Resultantly, we direct that there should be proper adherence to the resolution passed by the Board in respect of disbursing payments and/ or procuring material and despatching finished goods to their vendees, till the 1st of December, 2017, when final arguments shall be heard in both the Company Petitions. Should for any reason the aforesaid named officials of the Respondent Company be unavailable, the Chairman/ Executive Vice Chairman shall nominate any other official to represent them in signing cheques/ documents. It is also being made abundantly clear that should the Respondent's employees/ nominee fail to cooperate in countersigning the required documents, it shall be viewed as a deliberate*

attempt by the Respondents to thwart the working of the Company."

6. When the appeal was taken up, taking into consideration that petition under Sections 241 & 242 of the Companies Act, 2013 has been preferred by the Company ('Meidensha Corporation') alleging oppression and mismanagement against it and its members and the Tribunal passed one or other interim orders, this Appellate Tribunal with a view to regulate the conduct of the company affairs in a proper manner, on hearing the parties passed following interim order on 1st December, 2017:

*"**01.12.2017**- Let notice be issued on Respondents. Ms. Anuradha Sharma, Advocate accepts notice on behalf of 2nd Respondent. Mr. Anuraag Dayal, Advocate accepts notice on behalf of Respondents Nos. 3 to 8. Mr. Ramanjit Singh, Advocate accepts notice on behalf of Proforma Respondents nos.10 and 11. No further notice need be issued to them. Let notice be issued on the rest of the Respondents by Speed Post. Requisite along with process fee, if not filed, be filed by 4th December, 2017. If the Appellant provides the e-*

mail address of Respondent, let notice be also issued through e-mail.

Post these appeals on 21st December, 2017.

In the meantime, the National Company Law Tribunal shall not extend the interim order dated 23rd November, 2017 passed at 4.00 p.m. in Company Petition No. 369/ND/2017.However, it may proceed with the hearing of the main petition under Section 241 of the Companies Act, 2013. It is also made clear that for day-to-day functioning of the Company, the Company may release money, including payment, if any, to be made towards supply of materials, electricity, water, salaries, of officers, wages of the employees/workmen and statutory dues etc. payable. Both the parties will also ensure that the Company remains on-going without any hindrance of its work, including the work as required to be taken from companies officers, employees, workmen, experts etc. It is also made clear that for any purpose if any Form is to be filled up or signed, it should be in the Format as was existing as on the date of the filing of the

petition under Section 241 of the Companies Act, 2013 and will be signed by the persons, who were authorised to sign on such format as on the date of filing. In case, any of the signatory, belonging to any of group (Appellants or Respondents) refuse to sign or do not co-operate with the Company, it will be open to the parties to bring such fact to the notice of this Appellate Tribunal and may request to modify the present order."

7. The appeal was kept pending with a view to find out whether pursuant to the interim order the affairs of the company are being run in a proper manner. However, time to time applications were preferred by the Respondents alleging non-cooperation on the part of the Appellants, who are authorised to sign within the stipulated period. It was alleged that such non-cooperation on the part of the authorised representative of the Appellant is affecting the proper functioning of the Company.

8. In view of such allegation, on 26th September, 2018, we passed the following order:

*"**26.09.2018**— We have heard the parties with regard to the clarification of the interim order passed on 1st December, 2017.*

Having heard the parties, we make it clear that for the purpose of getting signature of the Appellants and its representative for day to day functioning if any requisition is made in the old format by the Respondents or any of the Officers, the Appellant or the authority competent to counter sign, it will clear the matter within 48 Hrs. In case of non-clearance, reason should be recorded and should be communicated to the parties who has made the requisition. The rejection of any requisition does not mean that the Appellants have power to audit the requisition made in the interest of the Company. Entry of any material in the premises of the factory for utilisation or commercial production of the company cannot be rejected.

The parties including the Appellants and the Respondents are directed not to create such situation which will be detrimental to the functioning of the Company. This order we have passed in addition to the earlier interim order passed by this Appellate Tribunal.

I.A. No. 1510 of 2018 stands disposed of.

Post the matter on 3rd October, 2018 for compliance."

9. After the aforesaid clarification of the interim order dated 1st December, 2017, the Company continues to function properly but in some cases, again allegations were levelled by the Respondents against one of the authorised signatories on the part of the Appellants. A Contempt Petition was also filed against Mr. Rohan Mehta & Ors. ('Appellants').

10. On 12th November, 2018, Mr. Rohan Mehta, one of the Appellants who is also authorised to sign pursuant to interim order of this Appellate Tribunal, appeared in person and informed that more than 27 bills they have cleared. Further informed that there is a difficulty in passing a number of bills etc. within short period of 48 Hrs. He prayed for four clear working days for clearing the bills and if so required after negotiation with the parties. The aforesaid statement was recorded by this Appellate Tribunal on 12th November, 2018, as quoted below:

*"**12.11.2018**– Mr. Rohan Mehta, one of the Appellants who is also authorised to sign pursuant to interim order of this Appellate*

Tribunal, appeared in person and informed the difficulty in passing a number of bills etc. within short period of 48 Hrs. He prays for four clear working days for clearing the bills and if so required after negotiation with the parties.

2. Mr. Rajeev Ranjan, Senior Counsel appearing on behalf of the Appellants submits that if any information is asked from the Respondents they should clarify it within 24 Hrs.

3. According to Mr. Ramji Srinivasan, Learned Senior Counsel, information, if any, is sought for, it should be made at least before the third day so that they may get 24 Hrs for clearance, otherwise it may exceed four working days.

We have heard the parties. Order reserved."

11. In view of the stand taken by the parties, the interim order passed on 1st December, 2017, as clarified by order dated 26th September, 2018, are made absolute which is to continue till the final disposal of the Company Petition pending before the Tribunal. However, in place of 48 Hrs, we allow Mr. Rohan Mehta and the other signatory Appellant(s) four

clear working days for clearing the bills as may be submitted and in case of any defect they may negotiate with the Directors and other authorised officer. If any clarification is sought for, it should be informed at least before the third day from the date of production of the bill(s) and other requisites so that the other group (Respondents) may get clear 24 hours to explain their stand to ensure that the total period do not exceed four working days.

In case bills or other requisition are not cleared by the representatives of the Appellants within four working days without giving valid reason and intimation to the other group (Respondents), the bills or other requisition, as may be submitted by the management will be deemed to have been cleared by the other group (Appellants).

12. As ordered, aforesaid arrangement will continue till final decision of the Company Petition No. 394 (ND)/2017. In view of the aforesaid arrangement, the interim orders passed by the Tribunal stand superseded.

13. Appeals and Interlocutory Applications stand disposed of with aforesaid observations and directions.

Contempt Case (AT) Nos. 11 of 2017; 01 of 2018 and 16 of 2018

14. Having heard learned counsel for the Appellants and taking into consideration the final order passed in Company Appeal (AT) Nos. 397-

399 of 2017, we are not inclined to proceed in the contempt proceedings.

They are closed.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

29th November, 2018

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