

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 31 of 2019

IN THE MATTER OF:

Brij Nandan Industries Pvt. Ltd. & Ors.

...Appellants

Vs

Abhimanyu Singh & Ors.

...Respondents

Present:

For Appellants: Mr. Aniruddha Roy, Mr. Nirmalya Dasgupta, Mr. Iswar Mohapatra and Mr. J. Patnaik, Advocates.

**For Respondents: Mr. Gautam Singh, Advocate for R-1, 3 to 9.
Mr. Rudreshwar Singh, Advocate for R-2.**

ORDER

08.03.2019: Respondent – ‘Abhimanyu Singh & Ors.’ (hereinafter referred to as ‘Petitioners’) filed application under Section 241-242 r/w Section 245 of the Companies Act, 2013 before the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as ‘Tribunal’). Appellants (Company and Others) are Respondents before the Tribunal. They filed objection with regard to maintainability of the petition. It was pointed out that the registered office of the Company being at Kolkata, the application will lie before the National Company Law Tribunal, Kolkata Bench, and not at Delhi.

2. In the said petition, the Petitioners (Respondents herein) claimed that they have 49% of shareholding in the Company and are entitled to inspect the records including Financial Statements and Books of Accounts. The Tribunal while adjourned the case for hearing on the question of maintainability of the petition under Section 241-242, granted permission to the Petitioners (Respondents herein) to inspect the records.

3. The impugned order dated 3rd January, 2019 is as follows:-

“ORDER

An objection is raised by the respondent with regard to the maintainability of the petition. It has been suggested that a petition filed under Section 241-242 of the Companies Act, 2013 cannot be maintained by invoking Section 245 as well. Learned counsel for the petitioner may seek instructions and file appropriate affidavit of the petitioner whether they wish to continue the petition filed under Section 241-242 or Section 245 of the Companies Act, 2013. The needful shall be done within two weeks with a copy in advance to the counsel opposite and the issue shall be decided at the time of final hearing.

List on 07.02.2019.

CA-740(PB)/2018:-

As per the averments made by the petitioners they have 49% shareholding in the respondent's company. According to the provisions of the Companies Act, the shareholders are entitled to inspect the record including financial statements/ Books of Accounts. Accordingly, a request has been made for permitting the petitioner to inspect the record with the assistance of any other professional. We grant the permission to inspect the record in accordance with the provisions of Companies Act and Rules framed thereunder along with the assistance of any other professional. The photocopies may also be furnished and the respondents shall allow access to the Books of account, Banking Transaction and other record. The matter be listed on 07.02.2019.

CA-844(PB)/2018:-

To be listed along with the main case on 07.02.2019.”

4. On hearing learned counsel appearing on behalf of the Appellants and learned counsel appearing on behalf the Petitioners (Respondents herein), we are of the view that the Tribunal should not have allowed the Petitioners (Respondents herein) to inspect the records at this stage when the question of maintainability of the petition at New Delhi is pending consideration before National Company Law Tribunal, Principal Bench, New Delhi. An interim order can be passed only by the Bench which is competent to decide the main petition. Only after deciding question of maintainability of the Company Petition under Section 241-242 and 245 of the Companies Act, 2013, if it is answered in affirmative i.e. the petition is maintainable at New Delhi, it is open to the Tribunal to pass appropriate order under Section 242(4) of the Companies Act, 2013.

5. In the result, we set aside the part of the impugned order dated 3rd January, 2019 as passed in CA-740(PB)/2018 relating to inspection of records by Petitioner (Respondents herein) but with liberty to the Petitioners (Respondents herein) to renew such prayer if it is answered that the petition is maintainable or before the Bench it is held to be maintainable. The appeal is allowed in part with aforesaid observations. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

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

am/gc