

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 14 of 2016

26.10.2016

IN THE MATTER OF:

Vinod Rayshi Malde

.....Appellant

Vs.

Sushil D.Bothra & Ors.

....Respondents

Present: Mr. Krishnendu Dutta with Mr. Bhushan Shah, Mr. Karandeep Khanna and Ms. Sanjana Saddy, Advocates for the Appellant

Mr. Sanjiv Sen, Senior Advocate with Mr. Navneet Dugar, Advocates for Respondent No. 1

Mr. Saurabh Kalia, Advocate for Respondent No. 2

Mr. Sumit Chopra, Advocate for Respondent No. 3

ORDER

Admit.

2. The appellant/2nd respondent-Mr. Vinod Rayshi Malde has preferred this appeal against impugned order dated 28th June 2016 passed by the Learned Member(Judicial), National Company Law Tribunal ("Tribunal" for short), Mumbai Bench, Mumbai in Clarification Application C.A 25/2016. By the impugned order, the Tribunal while made certain comments with regard to

earlier order passed by the Company Law Board, observed that "no interference in the garb of clarification is needed in the order dated 26th May 2016".

3. The Company Petition under Section 397 and 398 of the Companies Act 1956 (New-Section 241-242 of the Companies Act 2013) was filed by the Respondents before the Company Law Board and now it is pending consideration before the Tribunal, Mumbai Bench. Earlier when the Respondents/petitioners pressed an application for interim relief, the then Chairman, Company Law Board, New Delhi recorded the following Consent order on 26th May 2016:-

"Petition mentioned.

I have heard ld. Counsel for the parties at some length. There are allegations and counter-allegations. The Petitioner has shareholding to the extent of 50% and he is also a Director in Respondent No. 1 company.

Mr. Arun Kathpalia, ld. Counsel for Respondent No. 2 after obtaining instructions states that status quo with regard to the immovable assets shall be maintained. In other words the transactions which have already taken place would not be covered by this order and if further transactions or sale/purchase is to take place then prior permission of this Board shall be taken.

Reply be filed within four weeks with a copy in advance to the counsel for the petitioner. Rejoinder, if any, be filed within two weeks thereafter with a copy in advance to the counsel opposite.

List for consideration on 02.08.2016 at 10.30 AM."

4. According to appellant though undertaking was given by him to maintain status quo with regard to immovable assets, except those with regard to which transactions had already taken place, the said undertaking was given only with regard to assets which belongs to the company.

5. On the other hand, according to Learned counsel for Respondent No. 1, the consent order was passed by the Company Law Board after taking into consideration the immovable assets as reflected in Annexure-7 to the Company Petition, which includes the land purchased by third parties out of the loan amount taken from the company.

6. From the record it is clear that the Company Petition is pending for about six months though under Section 422 of the Companies Act 2013 normally it should be disposed of within three months. There is nothing on record to suggest that any reason has been shown by learned Member or obtained permission from the Hon'ble President, NCLT to allow further time to dispose of the petition as required under the said provision. The case is stated to be fixed for hearing on 23rd November 2016.

7. The Tribunal vide impugned order dated 24th August 2016 while observed that no interference in the garb of clarification is needed made the following observations:-

"9. In respect of the order issued, prima facie it appears that the funds of the company have been utilised to acquire the property listed in schedule 7; unless and until proved otherwise at the time of

finalization of CP in question. **The respected Coordinate Bench ought to have taken into consideration the clauses of the petition along with the account as well as the Annexure 7 (Page 81).** In other words, the CP in question revolves around those very properties which are alleged to be none of contention. Due to this reason, at the face of it, it was directed to maintain a status quo.

Rather the direction also contains that if sales/purchase are required to take place then prior permission shall be obtained from the Board (Now NCLT). Undisputedly the said direction was nothing but in the nature of a temporary arrangement so that during the pendency of the CP irreparable loss may not happen. In other words, let the CP be decided in which the properties in question are the subject matter of the controversy. Meanwhile no clarification is needed which may otherwise tantamount to review of the said direction."

8. Having heard the parties, we are of the view that without any discussion of the case of the parties or evidence on record, the Tribunal was not supposed to form even a prima facie opinion with regard to the fund utilized to acquire one or other property listed in Schedule-7 to the Company Petition. This apart, judicial decorum do not allow another Coordinate Bench or a Member(Judicial) to make any passing comment with regard to legality or propriety of earlier Order passed by another Bench, particularly when the order was passed by the Chairman of CLB, a Retired Chief Justice of High Court and now President of the NCLT. The Coordinate Bench has no jurisdiction to sit in

appeal over the order passed by Coordinate Bench by making comment as to which factor ought to have taken into consideration.

9. As the 'paragraph 9' of the impugned order is uncalled for, and is against the judicial decorum, we have no other option but to set aside 'paragraph 9' of the order dated 24th August 2016 passed by the Tribunal, as quoted above. The paragraph 10 of the order dated 24th August 2016 should be read as "no interference is needed in the order dated 26th May 2016 passed by the Company Law Board Bench, New Delhi".

10. Learned counsel for the appellant submitted that on wrong interpretation of the ad interim order dated 26th May 2016, the Sub-Registrar has ordered to maintain status quo with regard to all the immovable properties as shown in Schedule 7 including the properties of third parties who are not parties to the Competition petition. On the other hand, according to the learned counsel appearing on behalf of Respondent No. 1, the immovable properties shown in Schedule -7 were purchased by third parties out of loan amount taken from the Company.

11. In this connection, while we do not express any opinion, we are of the view that if any person is aggrieved against any action of the Sub-Registrar it is always open to him to move before a Court of competent jurisdiction for appropriate relief. The Tribunal or the Appellate Tribunal has no jurisdiction to make any observation or pass any order with regard to action taken by the Sub-Registrar.

12. In the result 'paragraph 9' of impugned order dated 24th August 2016 is set aside. 'Paragraph 10' of the said order stands modified to the extent above. The Tribunal is directed to dispose of the case on an early date taking into consideration the evidence on record.

13. We make it clear that this court has not expressed any opinion with regard to merit of the claim made by one or other party. The Company Appeal stands disposed of with the aforesaid observations. There shall be no order as to cost.

(Justice S.J.Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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