

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 21 of 2019

IN THE MATTER OF:

Nand Kishore Behera & Anr.

...Appellants

Vs

Jaganathdham Super Structures Pvt. Ltd. & Ors.

...Respondents

Present:

**For Appellants: Ms. Shruti Agarwal and Mr. Anirudh Sanganeria,
Advocates.**

For Respondents:

ORDER

23.01.2019: The petitioners filed application under Section 241-242 of the Companies Act, 2013 alleging oppression and mismanagement of the Company. The petitioners have alleged that Contesting Respondents no. 2 to 6 were syphoning the funds of the 1st Respondent Company. By way of interim prayer it was prayed to restrain Respondent No. 2 to 6 from operating bank account of the Company. The National Company Law Tribunal, Kolkata Bench (hereinafter referred to as 'Tribunal') passed impugned order dated 8th November, 2018, which reads as follows:-

“ORDER

- 1. Heard Ld. Counsel for the Petitioners and Ld. Counsel for the contesting respondents. I peruse the records. Ld. Counsel for the Petitioner submits that he is only praying for prayer (a) and (b) and not for entire relief. The prayer is about restraining Respondents no. 2 to 6 from syphoning of funds of the Company and restraining from operating the Bank Account of the Company (Respondent No.1).*

2. *It is alleged that respondents illegally changed the shareholding pattern thereby, reducing the Petitioner to minority shareholders. Respondent No. 2 to 6 got control of the Company illegally etc. In my considered opinion, the finding on this dispute even prima facie, can be recorded upon deep scrutiny only. It can be done at the time of final adjudication and not at this interim stage.*

3. *Moreover, if the Respondents no. 2 to 6 are restrained from operating Bank Account then in this case, the affairs of the Company cannot be run smoothly. Hence, such prayer cannot be considered at this stage. However, at the same time, in order to have some control on the bank transaction, those would be done by the Respondents. It is directed that the Respondents no. 2 to 6 to furnish this Tribunal the copies of Bank Statement after every three months, in duplicate, along with the Bank Statement, in short, about the income and expenditure of the amount it is received in the Bank. With this, interim prayer (a) to (b) are not considered at this stage.”*

2. Learned counsel for the Appellant made similar plea to restrain Respondent No. 2 to 6 from siphoning of funds of the Company and from operating bank account of the Company. It is stated that in the month of November, 2018 there were Rs.1,000/- in the account of the company and subsequently, in the month of December whatever sum came in the account of the Company, round about Rs.17 Lakh, has been siphoned off.

3. However, we are not going to decide any of the issue as the main petition is pending consideration before the Tribunal which relates to oppression and mismanagement. From the impugned order we find that the Tribunal has given sufficient protection to the petitioners by directing Respondent no. 2 to 6 to furnishing the copies of the Bank statement after every three months, in duplicate, alongwith the income and expenditure of the amount received from the Bank. Such protection having granted, no further interim order is required to be passed.

4. Having heard learned counsel for the Appellants and being satisfied of the grounds while we condone delay of 23 days in preferring the appeal, no relief is granted.

5. Appeal and I.A. No. 174 of 2019 both stand disposed of. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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