

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.173-174 of 2018

[Arising out of orders dated 08.05.2018 and 11.05.2018 passed by National Company Law Tribunal, Ahmedabad in IA No.154 of 2018 in TP No.102 of 2016 (Old No. – CP No.63 of 2015)]

IN THE MATTER OF:

1. M/s. Saibaba Surfactants Pvt. Ltd.
34, A – Wing, New York Trade Centre,
Opp. Jain Temple, Thaltej Cross Road,
Ahmedabad – 380054

...Appellant No.1
(Original Respondent No.1)

2. Sanjay Pranlal Mehta
104, Earth 12, Behind Sandhya Bungalow,
Opp. Hotel Planet Landmark,
Ambli Bopal BRTS Road,
Ahmedabad – 380058

...Appellant No.2
(Original Respondent No.2)

3. Urvish Sanjay Mehta
104, Earth 12, Behind Sandhya Bungalow,
Opp. Hotel Planet Landmark,
Ambli Bopal BRTS Road,
Ahmedabad – 380058

...Appellant No.3
(Original Respondent No.3)

Versus

1. Mr. Ganpatbhai Kanjibhai Patel
14, Setu Apartments,
Behind Surya Complex,
Drive In Road, Memnagar,
Ahmedabad – 380052

...Respondent No.1
(Original Petitioner)

2. The Manager,
Nutan Nagrik Sahkari Bank Limited (Bank)
Branch: Vora Chambers, Opp. Tubewell,
Nr. Rakhial Char Rasta, Rakhial,
Ahmedabad – 380021
...Respondent No.2
(Original Respondent No.6)
3. Bhavna Sanjay Mehta
104, Earth 12, Behind Sandhya Bungalow,
Opp. Hotel Planet Landmark,
Ambli Bopal BRTS Road,
Ahmedabad – 380058
...Respondent No.3
(Original Respondent No.4)
4. Dipali Samir Mehta
30, Shivalik Bungalows,
Anandnagar Road, Satellite,
Ahmedabad – 380015
...Respondent No.4
(Original Respondent No.5)

Present: Shri Virender Ganda, Sr. Advocate with Shri Arjun Sheth, Ms. Purti Marwaha Gupta and Ms. Henna George, Advocates for the Appellants

Shri Rahul Sahasrabuddhe, CS for Respondent No.1

ORAL JUDGEMENT

24.07.2018

A.I.S. Cheema, J. : Heard learned Senior Counsel for the Appellants and learned PCS for the Respondent No.1 (original Petitioner). Perused the Appeal. This Appeal has been filed by original Respondents 1 to 3 against Interim Orders, First - dated 8th May, 2018 and, Second - dated 11th May,

2018 passed by National Company Law Tribunal, Ahmedabad ("NCLT", in short) in IA 154/2018 in TP 102/2016 (old No. CP 63 of 2015) filed by the Respondent No.1.

2. The Order dated 8th May, 2018 reads as under:-

"Advocate Mr. Monaal Davawala is present for the Applicant. PCS Mr. Hitesh Buch present for the Respondents No. 1 to 5 in IA 154/2018.

The instant IA 154/2018 is filed by the Applicant with a prayer;

- a) to order and direct the Respondent Nos.1, 2 and 3 to release salary of petitioner till date;
- b) To order the Respondents to allow withdrawal of funds only with prior permission of this Hon'ble Bench upon mentioning grounds for utilization of the fund to be withdrawn.
- c) To order and direct the Respondents to add the name of the Petitioner as Joint Secretary in operation of all Bank Accounts including Cash Credit Accounts;
- d) To order the Respondents not to alienate/transfer/lease/mortgage/hypothecate any immovable/movable property of the Respondent Company to any party for any purpose;
- e) Any such order and or other further reliefs as the Hon'ble Tribunal deems fit and proper in the interest of justice.

On receipt of the notice PCS Mr. Hitesh Buch and other appeared and sought for adjournment on the ground of the absence of the Learned Lawyer Mr. Arjun Sheth who is under treatment. Learned lawyer appearing on behalf of the Applicant submitted that the main CP 63/2015 (TP 102/2016) is pending since long and as such the instant IA 154/2018 is filed

seeking interim relief. The learned Lawyer of the petitioner alleged that the Applicant/directors are not getting the salaries since the filing of the instant application and the Respondents are withdrawing the fund from the bank pertaining to the company apart from that there are some immovable properties in the name of the company. Hence, there is apprehension that the companies fund may be siphoned off during the pendency of the main CP 63/2015 and there is likelihood for alienation of the movable properties of the company which may be transfer/lease/mortgage of such property and in that event there will be irreparable loss to the company then the very purpose of filing CP 63/2015 will be defeated, if no, restrain order in the form of interim relief is granted during the pendency of the Company Application.

Considering the above stated facts and circumstances of the present case, the respondents are directed not to withdraw the fund lying in the name of the company from the bank(s) and/or alienate/transfer/lease/mortgage the company's property until further order.

The respondents have liberty to file reply, if any, within 2 weeks with an advance copy to the petitioner.

List the matter on 04.06.2018.”

3. Subsequent to the above Order, it appears that the matter was again taken up with NCLT and NCLT passed the following orders on 11th May, 2018:-

“Advocate Mr. Monaal Davawala is present for the Applicant. Senior Advocate Mr. Manish Bhatt with Advocate Ms. Krina Parekh i/b Advocate Mr. Arjun Sheth are present for the Respondent in IA 154/2018.

Heard the arguments of learned Counsel for the Applicant and the learned Counsel for the Respondents at length.

Learned lawyer appearing on behalf of the Respondent prayed for release of the amount pertaining to the salary head by modifying the order dated 08.05.2018 wherein an status quo order is passed in respect of the withdrawal of the funds from the company's account.

Learned lawyer appearing on behalf of the applicant vehemently opposed for any modification in the said order dated 08.05.2018 alleging that even after the passing of status quo order there are certain transactions took place in the company's account, which are contrary to direction of this court.

Having heard at length the submissions made by the learned counsel for both parties we feel that as the company has to run and to bear its day to day expenses hence, a sum of Rs.5 lakhs is allowed to be withdrawn from the company's account as prayed for.

Applicant further alleged that during the continuance of status quo order the respondent made a transaction from the account of the company. Hence, a notice be issued to the bank i.e. Nutan Nagarik Sahakari Bank Ltd. through its Branch Manager/Manager.

Meanwhile, respondents are further directed to submit the bank statement showing details particulars and nature of transaction made, if any, during the period of status quo order passed by this bench.

List the matter on 04.06.2018.”

4. Aggrieved by the above orders, original Respondents 1 to 3 have filed this Appeal. According to them, these Appellants are managing the

Company and business of the Company relates to chemicals and the Appellant No.1 Company is a going concern.

5. The learned counsel for the Appellants is referring to Page – 84 to point out list of dates and events which have taken place during the pendency of the Company Petition. The learned counsel tried to say that the original Petitioner has been prolonging the matter and on one date when the learned counsel for the Appellants – Mr. Sheth was seriously ill, and could not attend, the NCLT proceeded to pass first Order as mentioned above.

6. The learned PCS for the Respondent No.1 - the contesting Respondent (original Petitioner) is rather putting blame on Appellants and submits that the Appellants have now filed Contempt Application after this Appeal and the Appellants are prolonging the matter.

7. Going through the Impugned Order and the transitory nature of these Orders, fixing the matter on 04.06.2018, which shows that the learned NCLT was yet to really take up final decision on the IA 154 of 2018 which had been moved before NCLT, we find that there was really no good cause for moving this Appeal. However, looking to the fact that this is an old matter of 2015 and it appears from the submissions made by Counsel for the Appellant and PCS for Respondent No.1, that for some reason or the other, the matter is prolonging in NCLT, we feel it appropriate to

dispose of the present Appeal in terms of the Interim Order which this Appellate Tribunal had passed on 29th May, 2018 which reads as under:-

“.....In the meantime, the impugned interim orders passed by the National Company Law Tribunal on 8th May, 2018 and 11th May, 2018 shall continue. However, the Company is allowed to withdraw the amount from the Bank of the Company for day-to-day functioning of the Company such as payment of the salaries of Officers/employees/workmen, water and electricity charges and statutory dues etc. However, the parties will not withdraw any amount for any other purpose nor alienate or transfer, lease, mortgage the movable and immovable property. Interim order passed today shall be subject to the decision of the Company Petition and these appeals.”

8. We dispose this appeal in terms of above Order which will apply till decision of the IA 154/2018 or the Company Petition whichever is earlier. We request learned NCLT to consider on its own if it finds appropriate to decide IA 154/2018 separately, or, let the above Order continue and decide the IA 154/2018 along with the Company Petition itself.

9. Keeping in view Section 422 of the Companies Act, 2013, it is expected that the Company Petition should be disposed of as expeditiously as possible. The learned NCLT is requested to make efforts to dispose of the IAs pending along with the Company Petition as early as possible.

10. It will be open for the NCLT to consider if the IAs filed and pending need to be dealt with and decided along with the main Company Petition itself.

11. With these directions, the present Appeal is disposed of, with no orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn