

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

**Company Appeal (AT) No. 134 of 2017 along with Company
Appeal (AT) Nos. 135 of 2017 and 136 of 2017**

**(arising out of Order dated 24th March, 2017 by NCLT, Principal
Bench, New Delhi in C.P. No. 38(ND)/2015)**

Nand Lal Bhatia & Ors. Appellants

Vs.

Kuldeep Kaul & Ors Respondents

With

Nand Lal Bhatia & anr. Appellants

Vs.

**Horizon Broadcast Electronics
Pvt. Ltd. & Ors. Respondents**

With

HBE AVIOSEC Pvt. Ltd. & Ors. Appellants

Vs.

Kuldeep Kaul & Ors. Respondents

Present:

For Appellants -

**Mr. Rajiv Ranjan, Senior Advocate with Mr.
Siddharth Yadav, Mr. Rakesh Ojha and Mr.
Upinder Singh, Advocates.**

For Respondents-

**Mr. A. S. Chandhiok, Senior Advocate with
Mr. NPS Chawla, Mr. Sujoy Datta, Ms.
Arveena Sharma and Ms. Sweta Kakkad,
Advocates.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In these appeals, as common order dated 24th March, 2017 passed by the National Company Law Tribunal (hereinafter referred to as the '**Tribunal**'), Principal Bench, New Delhi is under challenge and common question of law involved, they were heard together and are being disposed of by this common judgment.

2. By the common impugned order, the Tribunal, Principal Bench having noticed the submission made by parties with regard to valuation report dated 8th February, 2017 filed pursuant to the order passed by the erstwhile Company Law Board (now **Tribunal**) made certain observations and directed as follows: -

"14. As a sequel to the above discussion the following directions are passed: -

- 1) Respondent Bhatia group is directed to pay a sum of Rupees One Crore to Kaul Group towards part repayment of inter-corporate loan within 30 days hereof, subject to the further direction of this Tribunal.*
- 2) Respondents shall file objection to the valuation report within 7 days thereafter with advance copy to petitioners.*
- 3) Petitioner shall file reply to the objection within 7 days thereafter.*

4) *The next date of hearing is fixed on 15.05.2017 for deliberation and final decision on the report of Auditor and valuer M/s. S.C. Vasudeva and Co., Chartered Accountants dated 8th February, 2017.”*

3. The brief facts of the case as pleaded by the appellant, Nand Lal Bhatia and others, are as follows.

4. M/s Horizon Broadcast Electronics Private Limited (HBEPL) was incorporated on 20.10.1999. 1st Respondent was given the authority to manage the business and operations of the HBEPL and HBE FZE and was also designated as ‘Manager’ for HBE FZE in the License Certificate issued by the SAIF Zone Authority of Sharjah UAE on 17.04.2010. 1st Appellant was given the authority to manage and control the business and operations of 3rd & 4th Appellant Companies and was designated as ‘Manager’ for 3rd Appellant Company in the License Certificate issued by the SAIF Zone Authority of Sharjah UAE on 20th June, 2011.

5. According to the Appellant(s) in the month of December, 2014, 1st & 2nd Appellants discovered that the financial performance of HBEPL for the period commencing from June 2014 was unusually dismal. 1st & 2nd Appellants were shocked to discover that the 1st and 2nd Respondents had by fabricating a Board’s resolution dated 12th November, 2014, purportedly passed by the Board of Directors of HBEPL, promoted a limited liability partnership in the name and style

of HBLLP and had further promoted an affiliate entity by the name of Horizon Electronics FZE in Sharjah UAE in February/March, 2015.

6. 1st & 2nd Appellants and 1st & 2nd Respondents agreed that the HBE Group will be split with effect from 01.04.2015 with 1st & 2nd Respondents retaining ownership and control of HBEPL and HBE FZE and the Appellants retaining control of 3rd & 4th Appellant Companies and “Three D Integrated Solutions Limited” on 1st April, 2015.

7. Further, according to the Appellants, 1st & 2nd Appellants further discovered that pursuant to a systematic and well-orchestrated scheme, 1st and 2nd Respondents had siphoned off the entire business of HBEPL into their newly and fraudulently incorporated limited liability partnership entity HBLLP and Horizon Electronics FZE. 1st & 2nd Appellants instituted a Company Petition being CP No.38 of 2015 under Sections 397, 398, 402, 403, 406, 235 and 237 of the Companies Act, 1956 before the erstwhile Company Law Board to restrain the 1st Respondent & 2nd Respondents from siphoning off the business and clients of HBEPL into HBPPL and Horizon Electronics FZE on 19th May, 2015.

8. The Company Law Board passed an order restraining 1st & 2nd Respondents from diverting the clients of HBEPL into HBLLP and Horizon Electronics FZE on 17th July, 2015.

9. 1st and 2nd Respondents filed Company Petition No.61(ND)/2015 under Sections 397, 398, 402, 403, 406, 235 and 237 of the Companies Act, 1956 before the Company Law Board on 7th August, 2015.

10. On 11th August, 2015, 1st & 2nd Appellants filed Company Petition No.62(ND)/2015 under Sections 397, 398, 402, 403, 406, 235 and 237 of the Companies Act, 1956 alleging oppression and mismanagement of 3rd & 4th Appellant Companies by the 1st & 2nd Respondents before the Company Law Board. The Company Law Board acknowledged and recorded the intention of an amicable settlement between the parties with the consent of both the parties, appointed M/s. S.C. Vasudeva and Co., Chartered Accountants to act as independent auditor to audit and finalize the statement of accounts with respect to the financial year 2014-2015 and determine the valuation of the assets for all the HBE Group of Companies on 13th August, 2015.

11. One Siddharth Bhatia, son of 1st Appellant vide an e-mail communicated to M/s. S.C. Vasudeva and Co. that 1st Respondent wanted valuation of HBE Group Companies for last three years. This mail was sent prior to the start of the valuation exercise on 1st December, 2015. E-mail dated 1st December, 2015 was duly acknowledged by M/s. S.C. Vasudeva and Co. vide another e-mail. Regardless of which M/s. S.C. Vasudeva and Co. conducted valuation for only one year only citing technical limitations.

12. Company Law Board passed order directing both parties to file undertaking stating that each will maintain assets at least worth INR 5 crores in one entity or collectively in their respective group companies, till the setting off/payment of the *interse* claims between the parties on 23rd March, 2015.

13. Audit report was submitted by M/s. S.C. Vasudeva and Co. to the Tribunal on 1st September, 2016. Draft valuation report to be submitted to Tribunal was circulated by M/s. S.C. Vasudeva and Co. showing consolidated financial results of companies enumerating results over 4 years on 13th December, 2016. Disregarding the email from Siddharth Bhatia, M/s. S.C. Vasudeva and Co., filed the valuation report containing material errors and showing consolidated financial results of companies over one year only on 29th December, 2016.

14. M/s. S.C. Vasudeva and Co. recognised the error(s) and filed a revised valuation report correcting the mistakes highlighted by Appellants on 8th February, 2017. Appellants re-filed the said objections, after making necessary administrative corrections on 21st March, 2017. The Impugned order was passed by the Tribunal on 24th March, 2017.

15. Learned counsel for the appellant assailed the impugned order on technical grounds as noticed below:

16. According to appellants, in paragraph 10 of the Impugned Order dated 24th March, 2017 (hereinafter "Impugned Order") passed by the Tribunal the finding has been wrongly recorded that the Appellants are requesting to make audit for 3 years (last line of the paragraph). The primary objection/prayer of the Appellants amongst others is that as per the agreed terms valuation was to be conducted for a period of 3 years covering FY 2012-2013, 2013-2014 and 2014-2015. The audit for FY 2014-2015 was conducted by M/s Vasudeva & Co. (hereinafter "Valuers") because it was not complete. (Previous years'

audit was not directed because audits were already completed and respective balance sheets were signed by both parties).

17. Further according to appellant in paragraph 9, last line of the Impugned Order, the Tribunal has erred by imposing certain terms to test the bona-fide of the Respondent/Appellant while agreeing that the Appellants have the right to object to the valuation report dated 08.02.2017 filed by M/s S.C Vasudeva & Co. (hereinafter "Valuation report"). The bona-fide of the Appellants cannot be tested again and again. In spite of the order dated 17th July, 2015, wherein by the interim order the Tribunal recorded the finding in favour of the Appellants and against the 1st and 2nd Respondents. The 1st and 2nd Respondents have indulged in diverting the business of the Horizon Broadcast Electronics Private Ltd. ("HBEPL") to Horizon Broadcast LLP ("HBLLP") and Horizon Electronics FZE and thus a restraint order was passed. Thereafter, again the bona-fide was demonstrated by the Appellants by agreeing to a consensus settlement which finds recorded the order of 13th August, 2015.

18. It was submitted that the Appellants again showed their bona-fide to maintain their asset at least worth INR 5 crores by giving an undertaking in terms of the order dated 23rd March, 2016. Therefore, enough security has been provided by the Appellants to the Tribunal before the exercise of audit and valuation was undertaken. Thus, at no stage the issue of providing further bona-fide additional security by making a payment of INR 1 Crore arise even before the final adjudication on the objection of the valuation report and the acceptance

of the valuation report. It is only after the final valuation report is accepted/ adjudicated the issue of adjustment and final liability of the parties would be determined.

19. According to Appellants, if the valuation of three years i.e. FY 2012-2013, 2013-2014 and 2014-2015 is undertaken based on the audited balance sheets already on record then even after adjusting the inter-corporate loans the Appellants would be entitled to 1.95 crores from the Kaul Group (Respondents). Thus, INR 5.87 crores is not admitted and the same will also be wiped out and overturned in favour of the Bhatia Group (Appellants) after undertaking valuation for a period of three years.

20. It was further contended that the direction in the interim order for payment of INR 1 crore is not the conduct or critical operations of the Kaul group companies. The operations and funds of HBEPL has already been siphoned off to the new fraudulently created entities HBLLP and Horizon Electronics FZE (which is the main allegation) by the 1st and 2nd Respondents, which has been accepted in the order dated 17th July, 2015 passed by the Tribunal. Whereas, on the contrary the direction to pay INR 1 crore is only to test the bona-fide of the Appellants – paragraph 9 last line of the impugned order only states ***“it is felt to impose certain terms to test the bona-fide of the Appellant”***, for consideration of its objections to the valuation report.

21. It was submitted that the impugned order has not been passed on the basis of any interim application filed under section 242(4) of the Companies Act, 2013.

22. Further, according to the Appellants the settlement initiative was voluntary by the Appellants and without the assent of the Appellants no such coercive directions can be passed by the Tribunal. In any event, if the settlement between the parties fail then the parties must argue before the Tribunal the main Company Petitions being CP No.38 of 2015, CP No.61 of 2015 and CP No.62 of 2015 on merits.

23. In the aforesaid background learned counsel for the appellants submitted that the direction passed by the Tribunal to pay 1 crore is not legal and valid and is not necessary at all to decide the objections to the valuation report filed by the Appellants.

24. Respondents highlighted the facts and oppose the submissions, the Tribunal having passed the interim order in the interest of the Company.

25. From the record, we find that the Company Petitions under Sections 397 and 398 read with Section 402 of the Companies Act, 1956 were filed. While appellants and respondents alleging oppression and mismanagement of same company by one or other. Allegations were made by respondents against the appellants that they incorporated Companies HBE AVIOSEC, LLP and were diverting business and siphoning off funds therein, to the exclusion of respondents.

26. The appellants made allegation that the respondents had incorporated Horizon Broad LLP and Horizon Broadcast FZE and had diverted business and funds therein, to the exclusion of appellants.

27. Erstwhile Company Law Board passed a consent order on 13th August, 2015 covering all the Company Petitions. The said order also took note of another group of companies “Three-D Integrated Solutions Ltd.” where parties had shareholding and also the entities which both the appellants and respondents had incorporated to the exclusion of the other. It was a composite order pertaining to all the entities by way of consent order. Annexure A to the order dated 13th August, 2015 lists all the Companies and the subsidiaries including the four incorporated entities, where diversion were alleged by both the sides. Annexure B is the list of Companies/entities covered by order dated 13th August, 2015.

28. The Tribunal took note of the averments made in the Company Petitions filed by the appellants, especially paragraph 7.4 and 7.8 and put to the parties if they were still ready and willing to go ahead with the agreement so pleaded therein. Both the parties affirmed the same and accepted that in terms of the agreements agreed to between them all incorporated entities carrying on business of ‘aviation’ are being managed and would continue to be managed by the appellants on transfer of the shareholding of the respondents. Other facts also evident from the order dated 13th August, 2015.

29. After constitution of the Tribunal on 1st June, 2016, the auditor M/s. S.C. Vasudeva & Company after circulating to the parties and inviting comments, draft financial statement/audit report, filed their audit report before the Tribunal on 1st September, 2016. Neither the appellants nor the respondents filed any objection to the audit

report dated 1st September, 2016. The Tribunal taken into consideration order dated 13th August, 2015 and passed order dated 10th November, 2016 directing the appellants to pay certain percentage of admitted liability unto the respondents' entities. As the said order was not complied with by the appellants, on 24th November, 2016, the Tribunal observed that the primary object of the aforesaid order was to permit the business of the companies belonging to both the groups run smoothly. In compliance with the order dated 24th November, 2014, M/s. S.C. Vasudeva & Co. by letter dated 13th December, 2016 reiterated and reaffirmed the amount of Rs. 9,31,67,979/- besides US\$ 4,30,564/- was payable by the appellants entities to the respondents' entities.

30. The Tribunal, provided opportunities to the parties to arrive at an agreed amount. However, as the parties failed to make a settlement about payment of agreed amount, the Tribunal passed the impugned order dated 24th March, 2017 and informed that the said order has been modified by order dated 24th April, 2017.

31. We are not deciding the question of admitted liability of the appellant, as were suggested by the learned counsel for the respondents. However, we find that the case is pending since long and has not reached finality and taking into consideration earlier order passed by the erstwhile Company Law Board in the said very petitions, the interim arrangement and order has been made.

32. As per Section 422 of Companies Act, 2013, the Tribunal was supposed to dispose of the appeal within 90 days. However,

because of non-agreement by the appellants or the respondents, in spite of valuation report submitted, it is more than one year has passed the Tribunal could not pass the final order.

33. As the amount ordered for payment by the Tribunal is much less than the actual valuation report, which may be varied, we are of the view that instead of interfering with the interim order and arrangement, the party should be directed to cooperate with the Tribunal to ensure final disposal of the Company Petitions.

34. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 24th March, 2017 and remit the case to the Tribunal, Principal Bench, New Delhi to decide the case after taking into consideration the valuation reports and other facts as brought on record and in accordance with law.

35. All the appeals, thereby stand disposed of with the aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Balvinder Singh]
Member (Technical)

[Justice S.J. Mukhopadhaya]
Chairperson

NEW DELHI
21st July, 2017

/ns/