

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) No. 92 of 2017

**(Arising out of Order dated 19th January 2017 passed by NCLT,
Chandigarh Bench in C.P. No. 103 (ND)/2015)**

Shri Surinder Kumar ViridiAppellant

Vs.

Beavers Leather Pvt Ltd. & Ors.Respondents

**Present: For Appellant: Shri Rakesh Kumar and P.K.
Sachdeva, Advocates**

**For Respondent 1 to 3: Mr. Rajinder Mahajan,
Advocate**

J U D G E M E N T

Balvinder Singh, Member (T)

1. This appeal has been preferred by the appellants against order dated 19.01.2017 passed by National Company Law Tribunal Chandigarh Bench filed under sections 397, 398, 402, 403 and 406 of the Companies Act, 2013 alleging oppression, mismanagement, siphoning off funds and illegal removal of Appellant from his directorship from the respondent No.1 company.
2. The Tribunal after hearing the parties and perusing the record held as under in paras 37, 39 and 40 of the impugned order:

37. *xxxx Prima-facie therefore the termination of petitioner as director is not legal though the same would be subject to the final decision in the pending civil suit filed by the petitioner, if the same is maintainable.*

xxxx

39. *xxxx Yet the fact remains that the respondents are getting the remunerations of Rs.3,60,000/- per annum as - whole time Directors as reflected in the annual returns. As per additional documents attached with CA No. 14 of 2014, the petitioner has filed the financial statements of the Company for the years 2014-15 and 2015-16, which shows that the remunerations are being paid to R-2 and R-3. From the said statements, it is quite clear that R-3 shown as Chairman and whole time Director receives Rs,2,10,000/- per annum as remuneration, whereas R2 whole time Director receives Rs.1,50,000/- per annum. The petitioner has categorically stated that no dividends of the Company are being paid for the past many years and this fact is also reflected in these financial statements. The respondents have not even contradicted the aforesaid allegation that the dividends have not been paid to the petitioner since the time of his induction as Director. The petitioner also wanted to say that nothing was even paid to his mother. who was a*

shareholder during her life time, but mother of the petitioner never raised any such issue before any forum. This aspect would however give rise to a cause as to how the affairs of the Company are being managed just to ignore the interest of the petitioner. who has maximum shareholding in the Company out of four shareholders.

40. Looking into the aforesaid aspects, it is quite clear that functioning of the respondent No. 1 Company is in a total mess because of the distrust between the petitioner on the one hand and the respondents on the other. We find it just and proper to provide exit to the petitioner because respondents No. 2 to 4 jointly hold majority shares in the Company, whereas the petitioner is a minority shareholder. We take cut off date as end of financial year 2014-15 i.e. 31.03.2015 for evaluating the fair value of the shares of the Company as soon thereafter i.e. on 07.05.2015. the petitioner was prima-facie illegally removed from the Board of Directors. We thus issue the following directions;

I) M/S Khurana Rajiv & Company, Chartered Accountant, SCO No.83940, Sector 22-A IInd Floor, Chandigarh (from out of the panel of Valuers approved by the High Court of Punjab and Haryana as informed by Official Liquidator to the Registrar of our Bench) are appointed as independent Valuer for determining the fair value of the shares held by the petitioner with cut off date as 31 .03.2015. The Valuer shall

determine the fair value of the shares keeping in mind that the manufacturing business of the Company is closed for many years and the factory of the Company except for 1000 square yards of vacant land has been leased out for about eight years, as apparent from terms of the lease deed. The Valuer shall determine the value by all the recognised methods and applicable rules and regulations on the said date i.e. 31.03.2015;

ii)The parties are directed to extend cooperation to the said Valuer. The Company shall submit all the official documents/papers for the purpose for valuation as desired/required by the Valuer;

iii)The Valuer shall supply to the parties the copy of the report to which the parties would be at liberty to file their objections within two weeks and the Valuer shall then prepare the final report within one month and send the same to the parties;

iv)On valuation of the shares of the petitioner, he shall be given exit by R-2 and R-3 by paying the amount as per percentage of their shareholding as on 31.03.2015 along with interest at the rate of 10% per annum from 01.04,2015 till payment This payment shall be made within three months of communication of the final report by Valuer and on receipt amount the petitioner shall execute all the documents/deeds necessary for the

transfer of the shares held by petitioner of the Company in favour of the respondents and/or their nominees within two weeks therefrom;

v)In case the respondents decline to purchase the shares of petitioner or fail to pay the amount within the period of three months from receipt of the final report of Valuer, the petitioner shall have the right to purchase the same from the respondents No.2 and 3. The procedure and time line as indicated as per the direction at (iv) shall be followed even in that case;

vi)The remunerations of the Valuer shall be negotiated and paid by the Company in three equal Instalments. The first instalment shall be paid to the Valuer within one week of receipt of certified copy of this order and second instalment on submission of the valuation report within the stipulated period and the third and final Instalment shall be payable to the Valuer on submission of the final report together with the objections and supplementary report;

vii)We further direct that with effect from the date of passing of this judgment, the respondents shall not draw the remunerations for future till the exit is provided to the petitioner and the amount of remuneration shall form part of the income of the Company till the exit is finalised, which would be liable to be distributed among the shareholders to the extent of shareholding of the

petitioner and respondents No.2 to 4. The respondents would also not transfer, lease or otherwise alienate any immovable assets of the Company during the interregnum.

3. The brief facts of the case that Respondent NO. 1 company was incorporated under Companies Act, 1956 on 29.05.1992 and as on 31.03.2014 the shareholding of the company with respondent no 2 had 10480 equity shares being 35.35%, respondent no. 3 with 7020 equity shares (23.68%) and the respondent no 4 had 1300 shares (4.38%) forming majority and on the other hand the Appellant who was appointed as a director of R1 company on 21.12.2013 had 10850 equity shares (36.50%) forming minority holding in the R1 company.
4. That the main object of the company was to manufacture, process, treat and deal in leather, leather cloth, plastics, oil cloth, linoleum, trapaulines, saddles, garments, gloves, purses, saddler, harness, travelling bags, springs, boot and shoe, leather dressers, tanners and every description of leather goods and leather chemicals.
5. That the respondent no. 1 company is mainly having property of 5000 sq. yards at 13 leather complex, Jalandhar, Punjab, which has been given on lease to M/s M.A. Traders for a lease amount of

Rs. 1,00,000 in the year 2005 due to losses in the business carried on behalf of the R1 company. This lease which expired on 13.04.2013 was further renewed for a period of 5 years and the rental is one lac per month.

6. That the appellant being director of the company of the respondent No. 1 company had convened its board meetings on 21.03.2015, 06.04.2015, 02.05.2015 and 18.05.2015 in which two additional directors were also appointed. One additional director was the wife of the appellant i.e., Mrs. Nachhattar Viridi and other appointment was of Mr. Prem Kumar the brother in-law of the appellant.
7. That the appellant had approached the Ld. NCLT (earlier before CLB) by filing the said company petition on 20.10.2015 wherein the appellant alleged mass scale oppression and mismanagement in the company and that the books of account were found to be fudged and cash entries had not been updated. It is further averred that the true profit of company was never declared nor the legally due dividend has been paid to the shareholders. Also, the appellant challenged the renewal of the lease deed by R2 & R3 and his removal from the directorship of R1 company.
8. The appellant had also separately filed a civil suit, bearing case no. 1482/2015 before Id. Court of Sh. Simran Singh, PCS, Civil Judge,

Jalandhar on 06.07.2015 seeking the declaration that his removal from the directorship as null and void.

9. It is the case of the appellant that the tribunal despite its finding that there is oppression and mis-management against the appellant with minority holding in the respondent no. 1 company instead of reinstating the appellant as director has directed the removal and exit of the appellant from the respondent no. 1 company.
10. That the only income of the respondent no 1. company is the rental income received from the lease property. It is contended by the appellant that when R-2 and R-3 are not handling the day-to-day affairs of the respondent no. 1 company, how can they be entitled to receive the said remuneration which is reflected in the financial statements when no such remuneration is being received by the appellant. Moreover, no dividend was paid to the shareholders.
11. It is contended by the respondents that the appellant without any lawful authority conferred upon him by the board of directors issued notice to the answering respondents for convening and holding the board meeting on 21.03.2015. It was further submitted by R-1 to R-3 in their reply dated 25.03.2017 that tribunal has made an observation that the respondent no. 1 company is in total

mess because of the distrust between the petitioner on the one hand and the respondents on the other hand and not on ground of minority oppression.

12. That in the written submissions Respondents have clearly stated that dividend was not given because it was never declared. However, it is noted from the impugned order that the respondents have not been able to rebut the contention of the appellant as when a company is not functioning, then the purpose of taking the whole amount of lease is not justified and amounts to siphoning off funds of the company and oppression of minority shareholders in the company.

13. However, it is not in dispute that the respondent no.1 company is non-operating company and is in losses. Also, the respondent no. 1 company is mainly having the property of 5000 sq. yards at 13 leather complex, Jalandhar, Punjab, which has been given on lease to M/s M.A.Traders for a lease amount of Rs. 1,00,000/- per month. The said lease which expired on 13.04.2013 was further renewed for a period of 5 years, however there is no record and reference of any board's resolution authorising to execute lease agreement by the respondents. It can also not be denied that on the date of expiry of the lease agreement the appellant was not appointed as the director of the company.

14. Further, it is also not in dispute that the appellant has been removed from the directorship of the respondent no. 1 company illegally because as per section 101 of the companies act 2013, a general meeting of the company can be called by giving not less than a clear 21 days' notice in writing or through electronic mode in such manner as may be prescribed and section 100 of the Act relates to calling of the EOGM of the company, for which decision has to be taken by the board of directors, here both the statutory requirements have not been complied with. These provisions are mandatory in nature and non-compliance of any of them would render the decision of the meeting as illegal and therefore the removal of the appellant by the respondents in the EOGM dated 7.05.2015 is null and void.

15. In the light of the above observations made, we are of the view that the business of the company is practically not there, also the removal of the appellant from directorship of the R1 company is illegal and the remuneration drawn by the respondents when the company is not functional in itself may amount to siphoning of funds and an act of oppression against the minority shareholders. It is also noted that the law cannot be used as a weapon to remove the minority shareholder from the company when there is an act of oppression against the minority shareholders. Otherwise, it

would become easy for a majority shareholder to commit an act of oppression against the minority shareholder and then get him removed from the company by giving him his value of share which has already been reduced due to the act of oppression and mismanagement. Further, the law cannot be applied in a manner that it incentivise the oppressor by providing him the benefit of purchasing the minority shareholding which has already been reduced due to his act of oppression. Therefore, the exit of the appellant without giving him the prior right to purchase the majority shareholding may also be unfair to him and to curb such practices, we issue the following directions:

- (i) that the appellant be restored as director of the R1 company till he exits the company.
- (ii) That the respondent shall quote the acquisition value per share to the appellant within a period of one month.
- (iii) That the appellant shall be given the right to purchase the value of shareholding of R2 and R3. However, to compensate the appellant being minority shareholder having received neither remuneration nor dividend, he shall be given the right to purchase the shareholding of R2 and R3 at a discount of 10% to the quoted rate.

- (iv) The appellant shall exercise the above right within 15 days from the date of communication of the acquisition value by the respondents and settle the accounts within 2 months from the date on which such right is exercised.
- (v) Further in case the appellant fails to provide the amount of the value of shareholding of R2 and R3 as per the quoted amount or fails to exercise his right within the above mentioned period, then R2 and R3 shall have the right to purchase the shareholding of the appellant as per the quoted acquisition value.
- (vi) However, this right of the respondent shall be exercised and accounts settled within 2 months from the date of failure of the appellant to exercise his right.
- (vii) We further direct that with effect from the date of passing of the judgment, the respondents shall not draw the remunerations for future till the accounts are finalised and either party is provided exit from the R1 company, which would be liable to be distributed among the shareholders to the extent of shareholding of the appellant and respondents no. 2 to 4. The appellant and respondents shall not transfer, lease or otherwise alienate any immovable assets of the company during the interregnum.

- (viii) Further the tribunal is directed to reschedule the date of listing according to the above mentioned timeline and ensure that the order of this appellate tribunal is implemented properly.

The order passed by the tribunal dated 19.01.2017 stands modified to the extent above. The appeal stands disposed of with aforesaid observations. However, in the facts and circumstances of the case there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member Technical

New Delhi
Dated: 21st July, 2017