

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 34 of 2019**

**IN THE MATTER OF:**

**Devendra Kumar Aggarwal & Ors.** ...Appellants  
**Versus**  
**Ravindra Kumar Aggarwal & Ors.** ...Respondents

**Present:**

**For Appellant :** **Ms. Garima Sharma, Advocate**  
**For Respondents :** **Mr. Virender Ganda, Senior Advocate assisted by Mr. Vipul Ganda, Mr. Ayandeb Mitra, Mr. Vishal Ganda and Mr. Anand Singh Sanger, Advocates**

**O R D E R**

**08.02.2019** The appellant (petitioner) filed an application under Sections 241-242 of the Companies Act, 2013 alleging 'oppression and mismanagement' by the respondents. In the said petition, the National Company Law Tribunal, Special Bench, New Delhi, (hereinafter referred to as the 'Tribunal') by order dated 25<sup>th</sup> January, 2019 passed the interim order on the allegation that machinery worth Rs. 8 Crores was proposed to be sold for a sum of Rs. 6.75 Crores, which reads as follows:

*“.... Having heard learned counsels for the parties, we are of the considered view that no comprehensive interim directions could be issued at this stage particularly when time of 7 days of filing reply has been taken by the respondent. However, in order to*

*keep the assets of the company intact and in order to avoid adverse effect on the assets of the company, we direct that Mr. Milan Kumar Aggarwal would not work as Additional Director nor the machinery would be sold till the next date of hearing.*

*List for arguments on 25.01.2019.”*

2. The respondents, who are also respondents herein, filed reply and requested for modification of the order. In the reply, they highlighted that if the transfer of the purchase order of the machinery is permitted then the company (petitioner No. 10) before the Tribunal would realise an amount of Rs. 7,96,95,000/- and it will earn a profit of Rs. 28,99,000/-. The outstanding amount of Canara Bank is Rs. 3,32,98,000/-, which will be paid. Taking into consideration the aforesaid submission and the interest of the company to sell the machine for a sum of Rs.8,87,60,000/- and that it may be in the interest of the company which is paramount, the Tribunal allowed it with direction to the appellant (petitioner) to file the rejoinder within two weeks. Learned counsel appearing on behalf of the appellant submitted that the respondent misled the Tribunal by referring that they will be getting much amount. In fact they are negotiating with the companies which has offered amount in US\$ and which is about Rs. 4 Crores approximately, thereby they are going to transfer the machinery which is more than Rs. 8 Crores for a sum of Rs. 4 crores or less. She further submitted the terms and conditions in which the respondent intend to sell, the total amount will not go into the company but only part of the same goes to it. Mr. Virender Ganda, learned Senior Counsel appearing on behalf of the respondent opposes the prayer and submitted that the amount is likely to

be more than Rs. 8 Crores which is offered money. No amount will be parted away from the said account.

3. Having heard the learned could for the parties, we are not inclined to interfere with the impugned order dated 25<sup>th</sup> January, 2019, as it appears that the submission of the appellant is based on the presumption that it will be sold for a less amount and if it is more than Rs. 8 Crores, less amount will be given to the company. In the circumstance, while we do not interfere with the impugned order dated 25<sup>th</sup> January,, 2019, allow the respondents to proceed in terms with the impugned order dated 25<sup>th</sup> January, 2019. After negotiations to sell, they will bring the matter to the notice of the Tribunal as to what amount the company is to release out of the machinery and if it is more than Rs. 6.4 Crores or Rs. 8 Crores as suggested, then only the Tribunal may approve it. The Respondent will ensure that no amount is diverted to the third party out of the sale proceeds of the machinery in question. The impugned order dated 25<sup>th</sup> January, 2019 stands clarified to the extent above.

4. The appeal stands disposed of with aforesaid observations. No cost.

[Justice S.J. Mukhopadhyaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

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