

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

**Company Appeal (AT) No. 64 of 2019**

(Arising out of Order dated 5<sup>th</sup> March, 2019 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. No. 926/KB/2018 in C.P. No. 31/KB/2017)

**IN THE MATTER OF:**

**Bijay Kumar Jaiswal & Ors.**

**...Appellants**

**Vs.**

**Shree Valley Realtors Pvt. Ltd. & Ors.**

**...Respondents**

**Present: For Appellant: - Mr. Mainak Bose, Mr. Amitabh Roy, Mr. Abhishek Sharma, Advocates.**

**For Respondents:- Mr. P. Nagesh and Mr. Soumya Datta, Advocates.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

In a pending petition under Sections 241-242 of the Companies Act, 2013, an interim order was passed on 14<sup>th</sup> February, 2017. The Respondent filed an Interlocutory Application for vacating the interim order dated 14<sup>th</sup> February, 2017 and for necessary directions.

2. The National Company Law Tribunal (hereinafter referred to as "Tribunal") by interim order dated 5<sup>th</sup> March, 2019, modified the order with following observations:

*“Upon hearing on both side and considering the submissions on both sides, I am satisfied that the applicant has sufficiently explained its reason to let out a portion of its building for earning money. In a case of oppression and mismanagement keeping idle a building which would fetch rent would cause hardship to the business interest of the Company. The letting can be terminated by giving 6-month notice on either side. The issues that higher rent would fetch if the vacancy in the building is advertised, that the applicant had fabricated the offer letter are cannot be considered at this preliminary hearing stage. It requires larger evidence. Therefore, in the better interest of the R1 company, it appears to me that permission to let out the building basement floor referred to above can be allowed subject to passing final order in the IA with a direction to the applicant to keep the rent in a separate account in the name of the company which could not be utilised for any purpose until the disposal of the CP and file periodical report in every three month in the Tribunal by giving copy to the respondent.*

*In the meanwhile Ld. Counsel for the applicant prays for filing rejoinder to the objections filed by the respondent. To be filed with in two week. Upon the*

*above said observation permission to let out is granted.*

*List the IA for hearing along with the CP to 10.05.2019.”*

3. Company Petition for ‘oppression and mismanagement’ was filed by the Appellant/ Petitioner wherein earlier the following order was passed by the Tribunal on 14<sup>th</sup> February, 2017:

*“Reply may be filed within three weeks. Thereafter rejoinder, if any, may be filed within three weeks. Meanwhile, both the parties are directed to maintain status quo regarding the shareholding and composition of the Board of Directors. Meanwhile, immovable properties of respondent No.1 Company can only be disposed of with the consent of both the parties or with the leave of the Court.”*

4. The Respondents took plea that one ‘Reliance Corporate IT Park Ltd.’ approached the company with a proposal for obtaining on lease 12,447 sq. ft. carpet area spreading across Basement, Ground Floor and Mezzanine Floor of Respondent’s Multi Storied B+G+M+6 building located at RAA-36, VIP Road, Raghunathpur, Kolkata 700059. The lease was sought for 12,447 Sq. Ft. commercial space available at the Basement, Ground Floor and Mezzanine Floor of the said premises for a period of 15 years commencing from March, 2019 at an agreed monthly rental of Rs. 5,75,425/- payable on 10<sup>th</sup> day of each month. It was also proposed that

possession has to be transferred latest by 15<sup>th</sup> March, 2019 and the relation can be terminated upon giving six months' notice from either side.

5. Learned counsel for the Original Petitioner opposed the prayer for modification and submitted that the basement area is being used as a Banquet Hall for ceremonial function for a rent of Rs. 1,50,000/- approx. per day. The said area is utilised by the company.

6. It was in the aforesaid background, the Tribunal having noticed the submissions, passed the impugned order allowing the Company to give it on rent to the party.

7. The Respondents have filed the Report of the Chartered Accountant (G L Harlalka & Co.) dated 8<sup>th</sup> May, 2019 from which we find that income on account of hire charges for Banquet Hall (Special Event) in ground and Mezzanine Floor in respect of premises No. RAA-36, V.I.P. Road, Kolkata-700059 is Rs. 4,75,000/- for the period from 1<sup>st</sup> April, 2017 to 31<sup>st</sup> March, 2018.

8. On the other hand, we find that for the said premises, the Company received a Term Sheet-cum-LOI from Perky General Retail (a business associate firm of 'Reliance Corporate IT Part Limited') on 8<sup>th</sup> January, 2019 who wished to take the basement, ground and mezzanine floor of the aforesaid premises i.e. same area on a monthly rent of Rs. 5,75,425/.

9. From the aforesaid fact, as we find that monthly rent of the same premises is much more than annual amount generated by the Company by giving it rent for banquet purpose, we are not inclined to interfere with the interim order passed by the Tribunal.

10. In absence of any merit, the appeal is dismissed. No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

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

NEW DELHI  
11<sup>th</sup> June, 2019

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