

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 260 of 2018

IN THE MATTER OF:

Atlas Cycles (Haryana) Ltd. & Ors. ...Appellants

Vs

Vikram Kapur & Ors.Respondents

Present:

For Appellants: Dr. Abhishek Manu Singhvi, Mr. Amrendera Sharan, Mr. Sudhir K. Makkar, Sr. Advocates with Ms. Saumya Gupta, Advocate.

**For Respondents: Mr. Salman Khurshid, Dr. U. K. Chaudhary, Sr. Advocates with Ms. Manisha Chaudhary, Advocate for R-1 & 2.
Mr. Ravi Krishan Chandna, Advocate for R-3.
Mr. Sudhir Chandra, Sr. Advocate with Ms. Meenakshi Singh, Advocate for R-9 to 13.**

With

Company Appeal (AT) No. 261 of 2018

IN THE MATTER OF:

Atlas Cycles (Haryana) Ltd. & Ors. ...Appellants

Vs

Vikram Kapur & Ors.Respondents

Present:

For Appellants: Mr. Sudhir K. Makkar, Sr. Advocate with Ms. Saumya Gupta, Advocate.

**For Respondents: Mr. Salman Khurshid, Dr. U. K. Chaudhary, Sr. Advocate with Ms. Manisha Chaudhary, Advocates for R-1 & 2.
Mr. Ravi Krishan Chandna, Advocate for R-3.
Mr. Sudhir Chandra, Sr. Advocate with Ms. Meenakshi Singh, Advocate for R-9 to 13.**

With

Company Appeal (AT) No. 262 of 2018

IN THE MATTER OF:

Atlas Cycles (Haryana) Ltd. & Ors.

...Appellants

Vs

Vikram Kapur & Ors.

....Respondents

Present:

For Appellants: Mr. Sudhir K. Makkar, Sr. Advocate with Ms. Saumya Gupta, Advocate.

For Respondents: Mr. Salman Khurshid, Dr. U. K. Chaudhary, Sr. Advocate with Ms. Manisha Chaudhary, Advocates for R-1 & 2.

Mr. Ravi Krishan Chandna, Advocate for R-3.

Mr. Sudhir Chandra, Sr. Advocate with Ms. Meenakshi Singh, Advocate for R-9 to 13.

ORDER

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Respondents- Mr. Vikram Kapur & Ors. filed application under Section 397 and 398 of the Companies Act, 1956 (now Sections 241 & 242 of the Companies Act, 2013) alleging the oppression and mismanagement on the part of the Appellants. The National Company Law Tribunal (hereinafter referred to as "Tribunal"), Principal Bench, New Delhi, by impugned order dated 2nd August, 2018 passed interim order, as follows:

“14. As a sequel to the above discussion we dispose of the application by issuing the following directions: -

1. The orders dated 24.08.2015 and 07.09.2015 are in operation. Both orders would continue to operate.

The resolution dated 13.08.2015 shall remain suspended till the final disposal of the company petition. In other words, the financial powers of the Sonapat Unit shall remain intact.

2. The resolution dated 14.12.2017 & 24.02.2018 shall be remain in abeyance and both the resolutions shall not be followed or operated till the disposal of the Company Petition namely 18(ND)/2015.

3. The Board of Director of Respondent No.1-Company shall facilitate the Sonapat Unit in production to achieve optimum level. If any sealing etc. has been done, then the same be removed within next three days.

4. We also direct the applicant/petitioner No. 1 along with other petitioners to furnish all details sought by the Board of Directors of respondent No.1-Company relating to fund flow from the Government order and utilization thereof. The petitioners shall also continue furnishing any other details with regard to the

finances of the Sonapat Unit to the Board of Directors of respondent No.1- Company.

5. The petitioner-applicant as well as the Managing Committee of Sonapat Unit shall not sell any scrap without prior approval of the Board of Directors which shall not be unreasonably withheld.

The application stands disposed of in the above terms.”

2. Learned Senior Counsel appearing on behalf of the Appellants submitted that the Company cannot be stopped from selling its products (cycles and its parts) in the States which are operated covered by the ‘Sonapat Unit’. The impugned interim order is against the interest of the Company, which by resolution dated 14th December, 2018 and 24th February, 2018 decided to operate itself in the States which are operated by the ‘Sonapat Unit’.

3. According to him, the ‘Sonapat Unit’ is non-functional unit and not producing any product such as cycles and its parts. On the other hand, cheques are issued by the contesting Respondents/Petitioners from ‘Sonapat Unit’ which bounced. If such activity is allowed, it may result into initiation of ‘Corporate Insolvency Resolution Process’ against the Company under the Insolvency and Bankruptcy Code, 2016.

4. Learned Senior Counsel appearing on behalf of the contesting Respondents/Petitioners submitted that on 8th January, 1999 all assets and businesses of the company were divided into three equal part. The Memorandum of Understanding (MoU) was signed and executed. Mr. I.D. Chugh, the Whole Time Director. The Appellant No.5 is a witness to the same. One Mr. K.N. Memani was appointed for valuation and division of the assets and business into three equal subsidiaries. The final report was submitted by him on 3rd January, 2003.

5. Further, according to contesting Respondents, the Board of Directors by its resolution dated 28th May, 1999 resolved to incorporate the aforesaid subsidiaries. The objective was to demerge the Company into three separate company ('Corporate Debtor') namely— 'Atlas Cycles (Sonapat) Limited', 'Atlas Cycles (Malanpur) Limited' and 'Atlas Cycles (Sahibabad) Limited' as per decision of all major shareholders of the Company.

6. Another MoU dated 31st August, 2003 was signed and executed between the parties relating to family controlled private companies, family properties, trust, etc. The Board of Directors passed resolution and assigned three units with full control to the following persons: -

- i. Mr. B D Kapur – Sonapat
- ii. Mr. Jaidev Kapur – Sahibabad
- iii. Mr. Jagdish Kapur – Malanpur

7. According to contesting Respondents, the Board of Directors of the Company is merely a representative Board comprising of friends, family and employees of the Company and its members and were working at their behest when all family members were together. Now because of the change in the equation between the shareholders they are working on the instructions of the company, which is controlled by shareholder of 'Sahibabad Unit', supported by shareholders who are in control of 'Malanpur Unit' which has already been closed because of inaction of the Board of Directors of the Company. Hence, according to Respondents, there is a division of all three 'independent and equal units' of the Appellant Company and their assets and companies and firms in three divisions.

8. With regard to the dishonour of some of cheques issued from 'Sonepat Unit', it was submitted that the management committee of the 'Sonepat Unit' had issued post-dated cheques in November, 2017 to the vendors' and suppliers so as to receive raw materials for the production of cycles so as to cater the order of the Gujarat and Rajasthan Government. By Boards Resolution dated 14th December, 2017, the Board of Directors created joint signatories, as a result of which the post-dated cheques when produced by the suppliers in the banks were dishonoured. The same has not been challenged by the Respondents as the petition was listed for final hearing before the Tribunal on 20th January, 2018 (Saturday) for its disposal.

9. It was further submitted that the Management Committee of the 'Sonepat Unit' used to send cheques to the Board of Directors, however, Mr. I.D. Chugh without any reasons used to send back cheques as it has been their calculative behaviour to strangulate and suffocate the 'Sonepat Unit' for funds.

10. It was submitted that the Board by its resolution dated 24th February, 2018, taken away the financial powers of 'Sonepat Unit' in entirety and the Unit was shut down.

11. We have heard Dr. Abhishek Manu Singhvi, Mr. Amrendera Sharan, Mr. Sudhir K. Makkar, learned Senior Advocates appearing on behalf of the Appellants and Mr. Salman Khurshid and Dr. U. K. Chaudhary, Learned Senior Advocates appearing on behalf of the contesting Respondents/Petitioners on the question of grant of interim relief and perused the record. The rest of the Respondents being formal Respondents, were not heard.

12. The Tribunal is empowered to pass interim order in a petition under Section 241 read with Section 242 of the Companies Act, 2013 in terms of Section 242 (4) of the Companies Act, 2013, which is as follows:

“242. Powers of Tribunal.—

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(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company’s affairs upon such terms and conditions as appear to it to be just and equitable.”

13. From the aforesaid provision, it is clear that the Tribunal is empowered to pass any interim order in a petition under Section 241 read with Section 242 for regulating the conduct of the company’s affairs upon such terms and conditions as appear to be just and equitable.

14. By the impugned order, the Tribunal has kept certain resolution in abeyance and directed to continue with the operation of the two orders dated 24th August, 2015 and 7th September, 2015. Two of the resolutions of the Board of Directors dated 14th December, 2017 and 24th February, 2018 have been kept in abeyance and the Board of Directors has been directed to facilitate the ‘Sonepat Unit’ in production to achieve the optimum level. The Applicant/Petitioner No.1 (Respondent herein) has also been directed to furnish all details sought by the Board of Directors of the Company relating to fund flow from the Government order and utilization thereof.

15. Learned Senior Counsel appearing on behalf of the Appellants submits that if the Respondents are allowed to sign the cheques, many of the cheques will be bounced, as already bounced and it may result into initiation of 'Corporate Insolvency Resolution Process' against the Company.

16. Further, according to him, till the 'Sonepat Unit' starts with its production to achieve optimum level, the Company should be allowed to supply the products such as cycles and its parts from other units, which are producing in excess to their demand.

17. Though, the contesting Respondents have taken plea that the Company has been divided into three Companies but it is not in dispute that even now the Company (1st Appellant) is only one. However, we find that the Company has three units namely— 'Sonepat Limited', 'Malanpur Limited' and 'Sahibabad Limited', which are under the administrative control of one or other group of the same family, and have their respective jurisdiction to sale products and they are keeping separate accounts, unit wise.

18. The Memorandum of Understanding of the years 1999 or 2003 has not been given full effect for last fifteen to eighteen years for dividing the Company into three different Companies except the administrative control, separation of jurisdiction for sale of product and to keep separate accounts. For the said reasons, no specific weightage can be given to one

or other unit except the interest of the Company for passing order under Section 242(4). The impugned order dated 2nd August, 2018 being in the interest of the Company, no interference is called for. However, in view of the submission made by the parties and in the interest of the Company, we pass the following order in addition to the impugned order passed by the Tribunal.

- i. The Board of Directors of the Company while facilitating the ‘Sonepat Unit’ in production to achieve optimum level may infuse funds for ‘Sonepat Unit’ to the extent it may require to achieve the production to optimum level. If the Company infuse any fund, it will be entitled to get the amount back from the ‘Sonepat Unit’ which is under the control of the contesting Respondents. In such case, the contesting Respondents will ensure that the amount infused by the Company in the ‘Sonepat Unit’ is returned as per terms and conditions, if any.
- ii. The cheques on behalf of ‘Sonepat Unit’ of the Company shall be signed by the Authorised person/Director of the ‘Sonepat Unit’ along with one of the authorised representative of the Company. For the purpose of such signature, the Company may either authorise any of its representative already posted in the ‘Sonepat Unit’ or may post any of its representative to ensure joint signatures on the cheque for payment in favour

of workmen, employees, suppliers or raw materials, other creditors, electricity charges, water charges, tax etc.

- iii. Till 'Sonepat Unit' achieve optimum level of production, it will be open to the Board of Directors of the Company to make available the products, such as cycles and other parts to 'Sonepat Unit' from other units for meeting the demand and supply in the market which is under the control of 'Sonepat Unit'. 'Sonepat Unit', in its turn, will keep an account of the products, such as cycles and other parts received from other units and after sale of such products will report the same to the Company as also the unit(s) from which the products such as cycles and its parts are supplied. The 'Sonepat Unit' will not sell any product such as cycles and its parts supplied by other units on credit. The 'Sonepat Unit' will transfer the amount generated from sale of product of other units to the unit concerned within 30 days of sale failing which, in default the present order passed by this Appellate Tribunal and order passed by the National Company Law Tribunal shall stand vacated.
- iv. Appropriate adjustment in the books of accounts should be maintained by the 'Sonepat Unit' with regard to products received from other units and it will communicate the month wise sale to the Company and unit concerned.

- v. The 'Sonepat Unit' and the contesting Respondents who are in control of 'Sonepat Unit' will furnish all details as may be sought for by the Board of Directors of the Company relating to fund flow from the Government order and utilization thereof as has been ordered by the Tribunal.
- vi. It is needless to say that the rest part of the order passed by the Tribunal relating to continuity to the operation of the orders dated 24th August, 2015 and 7th September, 2015 and suspension of resolution dated 13th August, 2015 and the order of abeyance relating to resolution dated 14th December, 2017 and 24th February, 2018 shall continue till the final disposal of the Company Petition.

The appeals stand disposed of with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI
28th August, 2018

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