

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 268 of 2019

IN THE MATTER OF:

Solitaire Capital India & Anr.

...Appellants

Vs

Vipul SEZ Developers Pvt. Ltd. & Ors.

....Respondents

Present:

For Appellants: Mr. Krishnendu Dutta, Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Apoorva Chowdhury, Advocates.

For Respondents: Mr. Rajnish Sinha and Mr. Nikhil Jain, Advocates for R-1 to 4, 10 to 12.

Ms. Renu Gupta, Ms. Sakshi Kapoor and Mr. Sreesh S., Advocates for R- 7 & 8.

Mr. Rahul Malhotra and Mr. Varun Garg, Advocates for R-9.

With

Company Appeal (AT) No. 289 of 2019

IN THE MATTER OF:

Karamchand Realtech Pvt. Ltd.

...Appellant

Vs

Solitaire Capital India & Ors.

....Respondents

Present:

For Appellant: Ms. Renu Gupta and Mr. Sreesh S., Advocates.

For Respondents: Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Apoorva Chowdhury, Advocates for R-1 & 2.

Mr. Rajnish Sinha and Mr. Nikhil Jain, Advocates for R-3 to 6, 10 to 12.

Mr. Rahul Malhotra and Mr. Varun Garg, Advocates for R-9.

ORDER

02.12.2019: Respondents 1 to 4, 7 & 8 and 10 to 12 has already appeared on 15th October, 2019. Some of them have filed reply affidavit. Notice on all other Respondents has also been served but no prayer has been made for filing of reply affidavit, therefore, the case will be heard on merit.

2. Company Appeal (AT) 268 of 2019 has been preferred by 'Solitaire Capital India & Anr.' -Petitioners before the Tribunal (hereinafter referred to as 'Petitioners') against interim order dated 9th August, 2019 passed by the National Company Law Tribunal, Court No. III, New Delhi (hereinafter referred to as 'Tribunal'), whereby conditional interim order of status quo has been passed.

3. According to learned counsel for the Appellants, the order of status quo has been made conditional till the decision of the learned Arbitral Tribunal, who is supposed to pronounce decision in the pending dispute between the parties. It was submitted that the Tribunal cannot exercise its power by referring to the decision as may be pronounced in the arbitral proceeding. Therefore, the conditional interim order is illegal.

4. The other appeal Company Appeal (AT) 289 of 2019 has been preferred by 'Karamchand Realtech Pvt. Ltd.' (Respondent No. 7 & 8 before the Tribunal). Learned counsel for the Respondent No. 1 and 2 (Appellants in the connected

appeal) submits that Tribunal has no jurisdiction to pass such interim order of status quo in an petition under Section 241-242 with regard to the assets of the Company. It is further submitted that an application under Section 8 of the Arbitration and conciliation Act, 1996 has been filed by the Contesting Respondents No. 1 to 4 (Respondents herein) raising the question of maintainability and before it is decided, the question of maintainability of the application under Section 241-242 cannot be decided and the Tribunal has no jurisdiction to pass even conditional order of status quo.

5. Similar plea has been taken by the Contesting Respondents No. 1 to 4 before the Tribunal. According to learned counsel for the Contesting Respondents the allegations under Section 241-242 arise out of the Board Resolution, which is also under challenge before the Arbitral Tribunal. The Arbitral Tribunal has not granted any ad-interim relief.

6. From the record we find that the Tribunal while going through the records for determining as to whether any interim relief can be passed or not, has noticed the pendency of an arbitral proceeding before the Arbitral Tribunal. It has also noticed that a C.A. No. 422/C-III/ND/201 filed under Section 8 of Arbitration and Conciliation Act, 1996 by the Responded No. 2 to the said petition on 21st June, 2019 is pending consideration. Having noticed the same, the Tribunal with a view to ensure that the property reflected in the name of

the Company is not disposed of to make the petition infructuous, passed following order:-

*“12. This Tribunal has consistently held that its pre-dominant focus is to safeguard the interest of the company while exercising jurisdiction under Section 241-242 of the Companies Act, 2013 as held by the Appellate Tribunal in **AMRITSAR SWADESHI WOOLEN MILLS PRIVATE LIMITED Vs. VINOD KRISHAN KHANNA & Ors. in NCLAT CA(AT) No. 256 of 2018 dated 1.4.2019** which is to the following effect:*

“It is settled law when a matter is before NCLT or before this Appellate Tribunal, arising under Sections 241-242 of the new Act, read with Rule 11, irrespective of what the parties plead, say or do, the paramount consideration of the Tribunal is to keep in view as to what is in the interest of the Company. The interest of parties is subservient to interest of Company. It is necessary for the Tribunal to first consider interest of Company.”

And in the normal course this Tribunal would not have interfered in light of the observations of the Hon'ble High Court of Delhi at paragraph 80 of its judgement rendered on 10th March 2015 and the conclusion reached therefrom. However, in view of the liberty granted by the same court vide its order dated 22.04.2019 and which liberty has also been exercised by the petitioners before the Arbitral Tribunal by filing a fresh application under Section 17 of the Arbitration and Conciliation Act, 1996 and in relation to which orders have been reserved on 17.05.2019, the interest of the 1st respondent company will be greatly prejudiced if third party rights are allowed to be created further in respect of the immovable property pending the decision of the Ld. Arbitral Tribunal covered under Sale Deed No. 3543 dated 12.05.2006 as has been done by the respondents thereby evidencing a satisfaction of the well laid down criteria for grant of as-interim relief from the stand point and in the interest of the 1st respondent company and its shareholders, as the said asset is to be protected until the decision of the Ld. Arbitral Tribunal arising out of its hearing on 17.05.2019 and to await the orders as are to be pronounced by it. In the

circumstances, a status quo order as and from this date in relation to the immovable property covered under Sale Deed No. 3543 dated 12.05.2006 will be in order, till the decision of the Learned Arbitral Tribunal being pronounced in relation to the dispute as between the parties pending before it or the decision of this Tribunal in relation to C.A.No.-422/C-III/ND/201 questioning the jurisdiction of this Tribunal in view of Section 8 of the Arbitration and Conciliation Act, 1996 whichever is decided earlier and with a view to preserve the property reflected presently in the name of the 1st respondent company till such time.

13. In relation to other ad-interim reliefs sought for, the same to await the decision of the Application in C.A. No. 422/C-III/ND/201 filed under Section 8 of the Arbitration and Conciliation Act, 1996 by Respondent No. 2 on 21.06.2019 to which the petitioner are given liberty to file a reply within 3 weeks from today. List the C.A. No. 422/C-III/ND/201 for completion of pleadings and arguments on 20.09.2019.”

7. The question arises for consideration as to how the petition under

Section 8 of the Arbitration and Conciliation Act, 1996 is maintainable with regard to the Sale Deed or Sale of one or other asset of the Company. However, this issue cannot be decided by this Appellate Tribunal as the matter is pending before the Tribunal. The other question is as to whether the Arbitral Tribunal, which is already deciding the claim of the claimant can decide the question of oppression and mismanagement, if any, caused by a member or members against one or other members or group of members or the Company or such action is prejudicial to the public interest or the interest of the members or company. However, such issue, we are not going to decide in this appeal. It is for the Arbitral Tribunal to determine, if such issue has been raised.

8. In the aforesaid background, the Tribunal rightly held that predominant focus in a Company Petition under Section 241-242 of the Companies Act, 2013 is to safeguard the interest of the Company. However, if a party raises the issue of maintainability of the petition under Section 241-242 by filing a petition under Section 8 of the Arbitration and Conciliation Act, 1996, the Tribunal rightly held that such issue is to be decided but after the pronouncement by the Arbitral Tribunal and in the meantime passed interim direction as it thought fit and proper in the interest of the company. If the Tribunal is required to pass further ad-interim relief order, it may wait till the

decision of the Arbitral Tribunal and then decide the main issue of maintainability and then decide on the question of passing further interim order during the pendency of the petition, if it is held to be maintainable.

9. We find no ground to interfere in such order as impugned in this appeal. Both the appeals are accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/sk