

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL****NEW DELHI****COMPANY APPEAL(AT) NO.371 OF 2017**

**(Arising out of order dated 13.09.2017 passed by the National Company Law Tribunal, New Delhi Bench at New Delhi in CP No.5(ND)/2015).**

**IN THE MATTER OF:****Before NCLT    Before NCLAT**

1. Brands Academy Pvt Ltd Regd Office: D-142A, 2 <sup>nd</sup> floor, Patel Garden, Dwarka Main road, Near Royal Banquet, New Delhi-110059	1 <sup>st</sup> Respondent	Appellant
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2. Mr. Sanjay Kumar (Director), R/o 262, DDA Flats (Expandable), Pocket-10, Nasirpur, New Delhi-110045	2 <sup>nd</sup> Respondent	Appellant
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**Vs**

1. Rishu Monga (Ex-Director) R/o C-3018, Gaur Green City, Indira Puram, Ghaziabad-201010 Uttar Pradesh.	Petitioner	1 <sup>st</sup> Respondent
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2. Mr. Ajay Kumar (Ex Director), R/o 91, Hans Nagar, Pandwala Kalan, Najafgarh, New delhi-110019.	3 <sup>rd</sup> Respondent	2 <sup>nd</sup> Respondent
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3. Registrar of Companies (ROC), 4 <sup>th</sup> floor, IFCI tower, 61, Nehru Place, New Delhi-110019		
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4. Regional Director (RD), A-14, Sector-I, PDIL, Bhawan, Noida Uttar Pradesh		
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Respondents

**Present: For Appellant:-**Mr Bijender Singh and Mr. Surendra, Advocates.

**For Respondents:** - Mr. Mukul Talwar, Senior Advocate with Mr. Aman Bhalla, Advocate.

And  
**COMPANY APPEAL (AT) NO.417 OF 2017**

**In the matter of:**

Rishu Monga,  
R/o C-3018, Gaur Green City,  
Indira Puram, Ghaziabad-201010  
Uttar Pradesh.

**Before NCLT**

**Before NCLAT**

Petitioner

Appellant

Vs

- |   |                                  |                                  |
|---|----------------------------------|----------------------------------|
| <p>1. Brands Academy Pvt Ltd<br/> Regd Office:<br/> D-142A, 2<sup>nd</sup> floor, Patel Garden,<br/> Dwarka Main road,<br/> Near Royal Banquet,<br/> New Delhi-110059</p> | <p>1<sup>st</sup> Respondent</p> | <p>1<sup>st</sup> Respondent</p> |
| <p>2. Mr. Sanjay Kumar (Director),<br/> R/o 262, DDA Flats (Expandable),<br/> Pocket-10, Nasirpur,<br/> New Delhi-110045</p>  | <p>2<sup>nd</sup> Respondent</p> | <p>2<sup>nd</sup> Respondent</p> |
| <p>3. Mr. Ajay Kumar,<br/> R/o 91, Hans Nagar,<br/> Pandwala Kalan, Najafgarh,<br/> New delhi-110019.</p>   |                                  |                                  |
| <p>4. Registrar of Companies (ROC),<br/> 4<sup>th</sup> floor, IFCI tower,<br/> 61, Nehru Place,<br/> New Delhi-110019</p>  |                                  |                                  |
| <p>5. Regional Director (RD),<br/> A-14, Sector-I, PDIL Bhawan,<br/> Noida<br/> Uttar Pradesh</p>   |                                  | <p>Respondents</p>               |

**Present:**

**For Appellant:**-Mr Mukul Talwar, Sr. Advocate with Mr. Aman Bhalla, Advocate for Appellant.

**For Respondents:** - Mr Bijender Singh and Mr. Surendra, Advocates.

**JUDGEMENT****BALVINDER SINGH, MEMBER (TECHNICAL)**

1. These two appeals have been preferred by appellants under Section 421 of the Companies Act, 2013 against the impugned order dated 13.09.2017 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench at New Delhi in C.P. No.5(ND)/2015. In appeal No.371/2017 the appellants have sought the relief of setting aside the impugned order dated 13.09.2017 and in appeal No.417/2017 the appellant has sought the relief of setting aside the finding pertaining to the appellant indulging in parallel business as well as the findings pertaining to the siphoning of funds not being proved against the respondents. The relevant portion of the impugned order dated 13.09.2017 is as under:

***“14. As the edifice of all decisions is based on the foundation of the alleged meeting dated 11<sup>th</sup> December, 2014, which as observed earlier cannot be held valid, the balance tilts therefore in favour of the Petitioner.***

***This Bench therefore holds and directs as follows:***

***“(1) Appointment of Respondent No.3 as Additional Director is null and void, a decision having been taken without a proper Quorum. His appointment is, therefore, set aside. Consequently, all major decisions taken by the Board of Respondents No.2 and 3 are a nullity which include removal of the petitioner as a Director and increase in the***

***authorised and paid up capital. It is, therefore, directed that the shareholding of the petitioner in the respondent company stands restored to 50%. The allotments of the increased shares are set aside. The Respondents are directed to strike off the names of the new members and return the share allotment money. They shall also rectify their register of members and the returns filed with the ROC.***

***(2) Declare the removal of the petitioner as a Director as illegal, a decision taken by the unauthorised Board. His position as a Director stands restored to Status ante the alleged EGM dated 11<sup>th</sup> December, 2014.***

***15. All the aforesaid acts perpetuated on the Petitioner were to his detriment and are undoubtedly oppressive to him, including blocking him from operating the company's Bank accounts and not granting his access to the company's statutory records and financial statements. During the course of the proceedings, the respondents were directed to furnish fortnightly statement of accounts to be petitioner. The respondents have flouted the same.***

***16. Given the situation where there is a complete deadlock between the 2 Directors, it would be expedient to direct the petitioner or Respondent No.2 seek an exit on a higher valuation proposed by either side. This Petition stands disposed in terms of the above. No order as to costs."***

2. The appellants in Company Appeal (AT) No.371 of 2017 has sought the following relief:

***a) set aside the impugned order of the Hon'ble National Company Law Tribunal, New Delhi dated 13.09.2017 in CP No.5(ND)/2015 (Company Petition filed before the erstwhile Hon'ble Company Law Board.***

The appellant in Company Appeal (AT) No.417 of 2017 has sought the following relief:

***a) set aside the finding pertaining to the Appellant indulging in parallel business as well as the finding pertaining to the siphoning of funds not being proved against the Respondents in the Judgement dated 13.09.2017;***

***b) ad interim order in terms of prayer above.***

3. We are firstly dealing with the Company Appeal (AT) No.371 of 2017 unless specifically stated in respect of Company Appeal (AT) No.417/2017. The brief facts of the case are that the Brands Academy Private Ltd (hereinafter referred to as a "Company") registered under the Companies Act, 1956. The authorised, issued and paid up share capital of the company is Rs.1,00,000/-. Shri Rishu Monga and Shri Sanjay Kumar are two directors of the company and are holding 5000 shares each of Rs.10/- per share. The company is involved in the planning and execution and conceptualization of events in India and abroad in the field of academic training. The company has only the above two directors. As per appellant, Mr. Ajay Kumar, Respondent

No.2 has been appointed as Additional Director by passing a Board Resolution on 11.12.2014. It is stated that the company was running smoothly and making profit as well and the appellants decided to take action against the respondent No.1 and his brother and the shares of appellant No.2 were split. Appellant filed a CS (OS) No.7 of 2015 against the respondent No.1 and his brother, their company and firm who apart from other anti-company activities were conducting an event "Global Quality Awards" in the name of M/s Brands Impact Private Ltd with a view to promote their own business interest at the cost, expense and by using company data-base and resources. Appellant No.1 permitted the appellant No.2 to allot his shares as desired in favour of the Respondent No.2 and Mr. Puneet Sachdeva. Notice under section 167 of Act was served by hand to the Respondent No.1 but he refused to accept the same. The appellants issued notice of EGM scheduled for 27.1.2015 to the respondent No.1 by speed post and mail. The respondent No.1 did not reply to the notice rather he threatened the company with dire consequences and as the subsequent events would unfold actually lived up to the threat by entangling the company in several cases including the Board of Directors in to criminal cases. The brothers were busy in diverting business and promoting their own and family concerns at the cost of business, reputation, goodwill and market standing of the appellant No.1 and an ensuing event was so promoted that it was to be used as launching pad for the brother of the Respondent No.1. The appellants filed civil suit before the Delhi High Court against Respondent No.1 and his brother alongwith their entities not to be associated with the event. The appellants and respondent filed contempt cases for non-compliances of the order passed in the civil suit by the High

Court including the direction for de-freezing the account of the appellant, however, the contempt petitions were disposed of leaving the parties at liberty to follow up the remedy in execution. None of the parties have approached the High Court for execution, however, the attempts by the appellant to operate the account was opposed by the Respondent No.1 in collusion with ICICI Bank, though the appellant No.1 is in dire need of funds. Respondent No.2 got his brother to file a civil suit against the company questioning his dismissal and seeking other relief. The respondent No.1 and his brother has set up rival business and companies in their own name and also the firms/entities set up by their family members are acting in tandem with each other leaving nothing to chance by hiring the same counsels for their cases and also for issuing specific notices against the company events and also obtain order to facilitate the business of their entities and blocking the businesses of the appellant company. It is stated that the Tribunal neither takes note of the conduct of the respondent on record prior and post petition or notices the admitted documents and company records or the settled legal principles, the proceedings and materials as placed before it but simply decided everything illegal since it has decided to believe the case of the Respondent No.1 and not to deal with the facts, materials placed and arguments advance by the appellant on record. Therefore, being aggrieved of the said impugned order of the Tribunal, the appellant has filed the present appeal

4. Reply has been filed on behalf of the Respondent No.1 stating that the appeal is wholly misconceived and based on misrepresentation and

concealment of facts. It has been stated that the judgement of the Learned NCLT is in accordance with law and has been delivered after taking into account the pleadings and the documentary evidence filed by the parties. The Respondent has stated that the appeal has been filed and attested on 22.9.2017 and there are pleadings in the appeal with respect to event on 25.09.2017 which cannot be possible if indeed the appeal had been prepared and filed on 22.9.2017.

5. Respondent No.1 further submitted that the present appeal is a malafide attempt by the appellants to circumvent and avoid compliance of the directions of the Tribunal in its judgement dated 13.9.2017. It is next stated that the appellant had submitted before the Tribunal that they are following the due process of law and would comply with the statutory filing which has not been done till date. It is further stated that the appellant No.2 is in the process of shifting the business of the appellant No.1 company and appropriating its goodwill and brand value to his other entities with the malafide intention of leaving the company bankrupt and in financial shambles so as to defeat the benefits of reliefs granted to the Respondent No.1.

6. Respondent No.1 has stated that the due to hard work and labour of the respondent no.1 the business of the company was progressing and it is wrong that the business of the company progressed due to hard work of appellant No.2. Respondent No.1 has denied that despite the alleged proxy business entities launched and promoted by it and his brother in any manner wrecked or affected the business, revenue and profitability of the company. It is stated that it is Respondent No.1 and his ideas and hard work that brought



and established the goodwill and brand name of the company after which the appellant No.2 with malafide intentions illegally, unceremoniously and without following the due process of law, removed the Respondent No.1 as director and further illegally diluted the shareholding of the Respondent No.1. It is next submitted that Respondent No.1 at no point of time launched any entities which were not in the knowledge of the appellant No.2 and the appellant No.2 himself had launched independent entities which were conducting the same business as that of the company and is still conducting the same business using the goodwill and brand name of the company. It is further stated that the Respondent No.1 and his brother were not bent upon to wreck the business of the appellant No.1 as alleged and it is wrong that the respondent No.1 was diverting funds of the company. Respondent No.1 has denied that the event Global Quality Awards was being held under the name of Brands Impact or that it was without the knowledge of the appellants as alleged.

7. Respondent No.1 has further denied that his brother or the employees of the company were indulging in fraudulent activities prejudice to the business interest of the company and it is wrong that the Respondent No.1 was patron and partner with the said employees in their alleged anti company activities. It is denied by the respondent No.1 that he had instigated the ex-employees to launch litigation against the company who were illegally terminated. It is reiterated that the Respondent No.1 had filed company petition against the oppression and mismanagement of the appellant No.2 in the appellant No.1 and his illegal conduct of appointing the Respondent No.2

as an Additional Director and illegal removal of Respondent No.1 as director of the company. It is reiterated that till such time as the Respondent No.1 was the director in the company, the company had been regular in filing its statements of affairs with the Registrar of Companies as required under the law.

8. It is stated that malafide conduct of the appellants is evident from the fact that they are attempting to insinuate and allege judicial misconduct on the part of the Respondent No.1 so as to cover their own wrongs and non-compliance of orders of erstwhile Company Law Board. It is argued that the cases has been filed to assert the rights of the Respondent No.1 in the company and to save the company from the malafide and illegal intentions of the Appellant No.2 to divert and misappropriate the brand name and goodwill of the company.

9. It is next argued that the Tribunal was justified in holding that the transfer of shares of the Company was not as per law and the proper procedure as laid down in the Articles of Association was not followed. It is stated that no resolution with respect to the transfer of shares was filed on record before the Tribunal and that the appellant No.2 has concocted pre-dated documents to show the alleged transfer of shares and filed them alongwith the appeal. The appellant No.2 never disclosed the dilution of the shareholding of the Respondent No.1 but he only disclosed the same when the appellant No.2 filed the detailed reply to the company petition. The Respondent No.1, on coming to know about the dilution of shareholding, immediately filed application under Section 6 & 9 of the Companies Act, 1956

seeking details of the said alleged transfer. In its reply the appellant No.2 disclosed that 2% shares had been transferred to one Mr. Puneet Sachdev and the Respondent No.3 but did not file any documents to prove the alleged transfer of shares. It clearly shows that the alleged transfer of shares was illegal. It is stated that no offer letter was sent to the Respondent No.1. However, the offer letter was also sent to Respondent No.2 and one Mr. Puneet Sachdeva who were not the existing shareholders of the company as on the date of the resolutions made in the EGM held on 27.1.2015. It is argued that the shares could only be offered to other individuals only after the existing shareholders had been offered the additional shares and the same had been denied by them. Therefore, the Tribunal was rightly justified in passing the order setting aside the decisions of the EGM dated 27.1.2015. There is no illegality or perversity in the orders of the Tribunal.

10. It is next argued that the non-supplying of the financial statement to the Respondent No.1 is clear evidence and indication of the oppression and mismanagement of the affairs of the company as well as the malafide intention of appellant No.2 to keep the Respondent No.1 out of the affairs of the company.

11. It is next stated that the Tribunal has rightly come to the finding that there is a deadlock in running and managing the affairs of the company in as much as there is no way in which the appellant No.2 and the Respondent No.1 can work together for the betterment of the company. The judgement of the Tribunal has been passed in accordance with law and after taking into account the pleadings and the documentary evidence filed by the parties.

12. Written submissions has been filed by the appellant No.2 and the Respondent No.1. Both the parties has reiterated their stand as submitted by them in appeal and in reply.

13. Company Appeal (AT) No.417 of 2017 has been filed by the appellant against the very same impugned order dated 13.9.2017 passed in CP No.5(ND)/2015. The appellant in this appeal has prayed to set aside the findings pertaining to the appellant indulging in parallel business as well as the finding pertaining to the siphoning of funds not being proved against the respondent in the judgement dated 13.9.2017. The appellant has filed the appeal to that extent only. No reply has been filed by the Respondents in this appeal. Learned counsel for the parties argued both the appeals.

13. We have heard the parties and perused the entire record in both the appeals.

14. The first issue raised by the appellant is that the Tribunal has erred in questioning and then setting aside the proposal to enhance capital in the legitimate exercise of its powers for the company business. The respondent No.1 has stated that no notice of convening EGM on 11.12.2014 was sent to him. The appellant No.2 has not produced any proof before the Tribunal that the notice was sent to Respondent No.1. That no proof has been produced even before this Appellate Tribunal to substantiate his version. The appellant No.2 and the Respondent No.1 being the only two directors of the company, no decision could have been taken without the consent of the respondent No.1. The decision to increase in the authorised and paid up capital was taken on the said EGM. Since no proof was produced by the appellant No.2

for inviting Respondent No.1 for the said meeting; Respondent No.1 being the director/shareholder of the company did not attend the meeting, therefore, without the presence of Respondent No.1, the quorum cannot be said to have been constituted nor any valid resolution passed.

15. The next issue raised by the appellant is that the shares were transferred to other members in accordance with the procedure as laid down in the Articles of Association and relevant provisions of law and the Tribunal has held this transfer as illegal. The Respondent No.1 has argued that the appellant No.2 has never denied the contention that the appellant No.2 and the Respondent No.1 were the only 50% shareholders of the company. It is stated that the shares were transferred to Respondent No.3 and Mr. Pawan Sachdeva without first being offered to the Respondent No.1. The appellant No.2 submits that letter of offer was made to the Respondent No.1 but he failed to apply for the increase in the shares and, therefore, the unsubscribed shares were allotted to others. The Respondent No.1 submits that the letter of offer was never served on him and the entire exercise of issuing a letter was a farce. The appellant No.2 have failed to place the copy of the letter sent to Respondent No.1 and the postal receipt also does not record the full address of the Respondent No.1. Respondent No.1 submits as no notice was received, the question of exercising his option for allotment never arose.

16. Since we have already held that without the consent/presence of the Respondent No.1 the quorum cannot be said to have been constituted nor any valid resolution passed; further no notice was received by the Respondent

No.1 for exercising the option, therefore, we hold that the shares were transferred to other members in an illegal manner.

17. The next issue raised by the appellant No.2 is that the Respondent No.1 is doing the parallel businesses through their own related parties and siphoning money of the company. The similar allegation has been levelled by the Respondent No.1 against the appellant. On hearing both the parties what appears is that both the parties are doing their parallel business. On record, a number of cases and counter cases have been filed in the various courts listed below:

S.No.	Case No.	Title	Status
1	C.S(OS) No.07 of 2015	M/s Brands Academy Pvt Ltd Vs Sh Rishu Monga & Ors	Disposed of on 09.01.2015
2	Contempt Petition No.451 of 2015 in CS No.07 of 2015	M/s Brands Academy Pvt Ltd Vs Rishu Monga & Ors	Disposed of on 11.12.2015
3	Cont. Case (c) No.616 of 2015	Rishu Monga Vs Brands Academy & Ors	Pending
4	CS(OS) No.2204/2015	Amol Monga Vs Brands Academy & Ors	Pending
5	Company Appeal No.26 of 2015	Rishu Monga Vs Brands Academy & Ors	Pending
6	CP No.5(ND)/15	Rishu Monga Vs Brands Academy & Ors	Pending
7	CP No.79(ND)/15	Rishu Monga Vs Big Brand Research & Ors	Pending
8	Cont Case No.522 of 2015	Rishu Monga & Ors Vs Sanjay Kumar & Ors	Disposed off vide order dated 11.12.2015
9	Labour Commissioner/ Labour Court	Amol Monga & Brands Academy Pvt Ltd	Pending

18. In view of the large number of cases filed against each other, therefore, we are of the opinion that it would not be possible for both the parties to work together for running the company in a smooth manner and it would be in the interest of both the directors/members as well as the company that one of them may seek an exit from the company.

19. In view of our above discussions, we do not find any cogent reasons to interfere in the impugned order. Both the appeals are dismissed. The impugned order dated 13.09.2017 passed by the National Company Law Tribunal, New Delhi Bench at New Delhi in CP No.5(ND)/2015 is upheld. No order as to cost.

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

(Mr. Balvinder Singh)  
Member (Technical)

New Delhi

Dated:19-3-2018

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