

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 421 of 2018

IN THE MATTER OF:

M/s. Manila Resorts Pvt. Ltd.

...Appellant

Versus

BAHL Paper Mills Ltd. & Ors.

...Respondents

Present:

For Appellant : **Mr. Peeyoosh Kalra and Mr. L.S. Aimol, Advocates**

For 1st & 16th

Respondents: **Mr. Virender Ganda, Senior Advocate assisted by
Mr. Rakesh Kumar, Mr. Sahil Gupta and Mr. Aashish
Khanna, Advocates**

For 3rd Respondent : **Mr. Munawwar Naseem, Advocate**

O R D E R

22.02.2019 A petition under Section 397, 398 r/w Section 402 & 403 of the Companies Act, 1956 (now Section 241 and 242 of the Companies Act, 2013) was filed by 'Bahl Paper Mills Ltd.' – petitioner (1st Respondent herein) alleging 'oppression and mismanagement' on the part of the respondent (Appellant herein). In the said case, the erstwhile Company Law Board passed the interim order on 19th May, 2016, which reads as follows:

"Petition mentioned.

I have heard the Ld. Counsel for the parties at some length.

Ld. Counsel for the respondent requests for some time to file reply. Let the reply be filed within two weeks with a copy in advance to the counsel for the petitioner. Rejoinder, if

any, be filed within two weeks thereafter with a copy in advance to the counsel opposite.

On behalf of the Respondent No.1 ld. Counsel has stated in categorical terms that the petitioner may participate in the affairs of Respondent No. 1 Company, and he may have access to the records by visiting the Registered Office and any other sites. It is further stated that status quo with regard to the shareholding of the petitioner which is 50.7% (51 %?) shall be maintained till the next date of hearing. It has also been stated that the petitioner shall be furnished fortnightly statement of accounts by the Respondent No. 1 Company.

The prayer for maintaining Status quo on the fixed assets has been opposed by the ld. Counsel for the Respondent No.1 Keeping in view the facts and circumstances of the case and the fact that the petitioner has about 51% of the shareholding its interests need to be protected. Accordingly, status quo with regard to the fixed assets of respondent No. 1 company shall be maintained. If any transaction with regard to fixed Assets takes place, the same shall be done with the prior permission of the Board.

List on 28.07.2016 at 2:00 Pm.”

2. Later on, the case was transferred before the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as **‘Tribunal’**), the

petitioner 'BAHL Paper Mills Limited & Ors.' filed an application under Section 425 of the Companies Act, 2013 read with Section 10, 11 and 12 of the Contempt of Courts Act, 1971 for initiating the contempt proceedings against the contesting respondents (appellant herein). In the said contempt petition filed under Section 425 of the Companies Act, the Tribunal by the impugned order dated 26th October, 2018 issued notice for initiation of contempt proceedings and observed :

“24. The defence pleaded by the respondents is wholly unwarranted. The import of order dated 19.05.2016 in clear terms show that the status quo was to be maintained in respect of fixed assets belonging to respondent 1 company and if any, transaction was to take place in respect of fixed assets then prior permission of this Tribunal was required. Admittedly, no permission was taken. The expression fixed assets has not been defined in (Ind AS) 18. The matter was contested. The ‘fixed assets’ as understood by all and sundry is land, property and capital assets. The argument that the property is goods was not raised when interim directions were issued. Therefore, the property should have been sold after obtaining permission from NCLT. The definition of expression goods in the Accounting Standard would not advance the case of respondent as the expression goods has not been used in the order dated 19.05.2016.

24. *Therefore, we find that there is a prima facie case of intentional violation of order dated 19.05.2016 and we take cognizance of the fact that sale deeds have been admittedly executed on 09.06.2016, 27.03.2017, 19.06.2017, 29.06.2017, 18.07.2017, as is shown in the table under para 3 of this order. Accordingly notices be issued for framing of charges to Mr. Amar Pal Singh son of Mr. Kuldeep Singh, R/o House No. 042, Katoratal, Ram Nagar, Kashipur, Udham Singh Nagar, Uttrakhand - 244713 and Mr. Sanjeev Kapoor son of Sh. P.P. Kapoor, Director of M/s. Manila Resorts Private Limited registered S-401, School Block, Shakarpur, Opposite Prachin Shiv Mandir, New Delhi -110 092.”*

3. Mr. Peeyoosh Kalra, learned counsel for the appellant submits that the appellant company has no grievance against the impugned order dated 26th October, 2018 insofar it relates to initiation of contempt proceedings against the Directors of the Company. It is submitted that the interim order of *status quo* with regard to fixed assets, as was passed by the erstwhile Company Law Board, has now been wrongly explained in paragraph 24 of the impugned order, as quoted above. The company being a real estate company, if flats, lands and villas are not allowed to be sold, in such case the Company will suffer and the interim order will not be consistent with Section 242(4) of the Companies Act, 2013.

4. Mr. Virender Ganda, learned Senior Counsel appearing on behalf of the petitioners (Respondents herein) submitted that the members against whom the

contempt proceedings have been initiated, earlier preferred the appeal(s) against the impugned order and this Appellate Tribunal had not entertained the appeal(s) at their instance and asked them to take all the plea before the Tribunal. Therefore, according to him no specific finding should be given by this Appellate Tribunal as the appellant has the right to bring all the facts to the notice of the Tribunal.

5. In the present case we find that the company is not aggrieved with the order of initiation of contempt proceedings against the Directors; the only grievance is against observation made in paragraph 24 of the impugned order.

6. It is true that the order of *status quo* is with regard to fixed assets of the company should not be confused with the performance of the company while doing its business and the company being a 'real estate company'. The company requires to sell its flats, lands or villas in normal course of business which has not been stayed by the Tribunal or by the interim order.

7. While making it clear and in view of the pendency of the petition, we are not inclined to interfere with the impugned order dated 26th October, 2018 (at paragraph 24) quoted above. We also make it clear that we have not given any finding with regard to shareholding for one or other member company and other assets of the company which are not meant for real estate business. Further, we make it clear that we have not made any finding on merit, which is to be looked into by the Tribunal while deciding the question of contempt proceedings against the contemnor (members).

8. The appeal stands disposed of with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

/ns/uk/