

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.391 of 2018

IN THE MATTER OF:

Surender Kumar Virdi
J-II, 504, Nitishree Apartments,
Shourya Green,
Surya Enclave
Jalandhar.

...Appellant
(Original Petitioner)

Vs

1. Beavers Leathers Pvt Ltd
No.13, Leather Complex,
Kapurthala Road,
Jalandhar.

2. Jitender Kumar
1043, Boota Manda,
Nakodar Road,
Jalandhar City.

3. Mrs Pushpa Devi
1/18, Deol Nagar,
Jalandhar City.

4. Shri Madhan Mohan Madhas
House No.1043, Buta Mandi,
Jalandhar.

...Respondents
(Original Respondents)

Present: Mr. Ashish Singh with Ms Juhi Chawla, Advocates for Appellant.
Mr. Rajinder Mahajan, Advocate for Respondents No.1 to 3.

ORAL JUDGEMENT
(25.01.2019)

Per:-A.I.S. Cheema, J: Heard Learned counsel for appellant and Respondents No.1 to 3. The parties are in second round of litigation before us. On the earlier occasion in Company Petition No.103(ND)/2015 R.T. No.8/16 pending in National Company Law Tribunal (NCLT in short),

Chandigarh, NCLT had disposed the Company Petition vide order dated 19.1.2017. The matter at that time was carried to this Tribunal in Company Appeal (AT) No.92/2017 and the same was disposed by judgement dated 21.7.2017 by Bench of this Tribunal (to which one of us, Mr. Balvinder Singh, Member (Technical) was party). The first order dated 19.1.2017 of the NCLT was modified by order dated 21.7.2017 to the extent as was directed and the contesting parties were given opportunity to buy out each other.

2. The Original Respondent Nos.2 and 3 then filed CA No.217 of 2017, 306/2018 as applicants claiming to have taken steps as per orders passed by this Tribunal and the original Respondent No.2 and 3 sought permission to tender before the Tribunal an amount of Rs.1,56,24,000/- towards consideration for acquisition of the shares of original petitioners.

3. It appears that when the said application came up before NCLT the appellant-original petitioner filed reply raising grievances. It has been argued by the learned counsel for the appellant that the first order of NCLT was only modified by this Tribunal and or first order of NCLT required valuer to give report to which the original petitioners was entitled to raise objections and such opportunity was not given to the petitioner. The petitioner wanted to have access to the accounts to verify the valuation which opportunity he did not get. The learned counsel submitted that the NCLAT order dated 21.7.2017 had directed the respondents to restore the appellant as Director but the same compliance was not done in time. According to him it was done only on 31.8.2018 and thus he did not get a fair opportunity in NCLT. Learned

counsel stated that there are various deficiencies in the accounts and because of that the appellant wanted to get the accounts checked which he could not do as he was not restored as Director in time.

4. Learned counsel for the Respondent No.2 and 3 is opposing the arguments submitted by the learned counsel for the appellant. He pointed out from the impugned order itself where in para 8 NCLT observed that the respondents had urged that decision was taken to restore the original petitioner in meeting in August, 2017 but formalities of filing online form could not be completed on the portal of MCA. Counsel referred to para 10 of the impugned order and stated that the ROC was present in NCLT on 22.4.2018 and had pointed out difficulties in online filing and the respondents had been permitted to do physical filing.

5. The learned counsel for the appellant countered the learned counsel for the respondent claiming that if in August, 2017 appellant had been restored as Director, it was not communicated to him nor he was invited to attend.

6. We have gone through the matter. Learned counsel for the appellant referred to the 1st order dated 19.1.2017 where the operative para 40, 41 reads as under:

“40. Looking into the aforesaid aspects, it is quite clear that functioning of the respondent No. 1 Company is in a total mess because of the distrust between the petitioner on the one hand and the respondents on the other. We find it just and proper to provide exit to the petitioner because respondents No.2 to 4 jointly hold majority shares in the Company, whereas the petitioner is a minority shareholder. We take cut off date as end of financial year 2014-15 i.e. 31.03.2015 for evaluating the fair value of the shares of the Company as soon thereafter i.e. on 07.05.2015, the petitioner was prima-facie illegally removed from the Board of Directors. We thus issue the following directions;

- (i) ***M/s Khurana Rajiv & Company, Chartered Accountant, SCO No. 839-40, Sector 22-A IInd Floor, Chandigarh (from out of the panel of Valuers approved by the High Court of Punjab and Haryana as informed by official Liquidator to the Registrar of our Bench) are appointed as independent Valuer for determining the fair value of the shares held by the petitioner with cut off date as 31.03.2015. The Valuer shall determine the fair value of the shares keeping in mind that the manufacturing business of the Company is closed for many years and the factory of the Company except for 1000 square yards of vacant land has been leased out for about eight years, as apparent from terms of the lease deed. The Valuer shall determine the value by all the recognised methods and applicable rules and regulations on the said date i.e. 31.03.2015.***
- (ii) ***The parties are directed to extend cooperation to the said valuer. The Company shall submit all the official documents/papers for the purpose for valuation as desired/required by the Valuer.***
- (iii) ***The Valuer shall supply to the parties the copy of the report to which the parties would be at liberty to file their objections within two weeks and the Valuer shall them prepare the final report within one month and send the same to the parties;***
- (iv) ***On valuation of the shares of the petitioner, he shall be given exit by R-2 and R-3 by paying the amount as per percentage of their shareholding as on 31.03.2015 along with interest at the rate of 10% per annum from 01.04.2015 till payment This payment shall be made within three months of communication of the final report by Valuer and on receipt amount the petitioner shall execute all the documents/deeds necessary for the transfer of the shares held by petitioner of the Company in favour of the respondents and/or their nominees within two weeks therefrom;***
- (v) ***In case the respondents decline to purchase the shares of petitioner or fail to pay the amount within the period of three months from receipt of the final report of Valuer, the petitioner shall have the right to purchase the same from the respondents No.2 and 3. The procedure and time line as indicated as per the direction at(iv) shall be followed even in that case;***

- (vi) **The remunerations of the Valuer shall be negotiated and paid by the Company in three equal instalment shall be paid to the Valuer within one week of receipt of certified copy of this order and second instalment on submission of the valuation report within the stipulated period and the third and final instalment shall be payable to the valuer on submission of the final report together with objections and supplementary report;**
- (vii) **We further direct that with effect from the date of passing of this judgment, the respondents shall not draw the remunerations for future till the exit is provided to the petitioner and the amount of remuneration shall from part of the income of the Company till the exit is finalised, which would be liable to be distributed among the shareholders to the extent of shareholding of the petitioner and respondents No.2 to 4. The respondents would also not transfer, lease or otherwise alienate any immovable assets of the Company during the interregnum.**

41. In case of any difficulty in implementing this order, the petitioner is at liberty to come back to the tribunal. The order reliefs prayed by the petitioner are declined. There is no order as to costs of this petition.”

7. According to the counsel this order dated 19.1.2017 of the NCLT clearly provided for valuation by the independent valuer and the direction (iii) had given opportunity to the original petitioner to raise objection to the valuation. It is also argued the direction (vii) required that the respondents shall not draw the remunerations for future till the exit is provided to petitioner but in spite of these directions the respondents had been drawing remuneration and had continued to lease the factory land.

8. The operative order of Judgement dated 21.7.2017 passed by this Tribunal in Company Appeal (AT) No.92/2017 reads as under:

“Further, the law cannot be applied in a manner that it incentivise the minority shareholding which has already been reduced due to his act of oppression. Therefore, the exit of the appellant without giving him

the prior right to purchase the majority shareholding may also be unfair to him and to curb such practices, we issue the following directions.

- (i) that the appellant be restored as director of the R1 company till he exits the company.***
- (ii) That the respondent shall quote the acquisition value per share to the appellant within a period of one month.***
- (iii) That the appellant shall be given the right to purchase the value of shareholding of R2 and R3. However, to compensate the appellant being minority shareholder having received neither remuneration nor dividend, he shall be given the right to purchase the shareholding of R2 and R3 at a discount of 10% to the quoted rate.***
- (iv) The appellant shall exercise the above right within 15 days from the date of communication of the acquisition value by the respondents and settle the accounts within 2 months from the date on which such right is exercised.***
- (v) Further in case the appellant fails to provide the amount of at the value of shareholding of R2 and R3 as per the quoted amount or fails to exercise his right within the above mentioned period, then R2 and R3 shall have the right to purchase the shareholding of the appellant as per the quoted acquisition value.***
- (vi) However, this right of the respondent shall be exercised and accounts settled within 2 months from the date of failure of the appellant to exercise his right.***
- (vii) We further direct that with effect from the date of passing of the judgment, the respondents shall not draw the remunerations for future till the accounts are finalised and either party is provided exit from the R1 company, which would be liable to be distributed among the shareholders to the extent of shareholding of the appellant and respondents no. 2 to 4. The appellant and respondents shall not transfer, lease or otherwise alienate any immovable assets of the company during the interregnum.***
- (viii) Further the tribunal is directed to reschedule the date of listing according to the above mentioned timeline and ensure that the order of this appellate tribunal is implemented properly.***

The order passed by the tribunal dated 19.01.2017 stands modified to the extent above. The appeal stands disposed of with aforesaid observations. However, in the facts and circumstances of the case there shall be no order as to cost.”

9. In the present impugned order which has been delivered on 19.9.2018 passed by NCLT after hearing both the parties in view of the application filed by Respondent No.2 and 3, when the appellant raised objection with regard to claim of opportunity to file objections, the NCLT found (para 13 of the impugned order) that the Appellate Tribunal has clearly permitted the respondents to quote acquisition value within a period of one month and whatever defence was taken in raising objection about the report of the valuer could not be sustained. The learned counsel for the respondents has submitted that the respondents had thus made compliance of offer within one month as per direction of this Tribunal which was passed on 21.7.2017 which compliance has been referred by NCLT at para 12 of the impugned order. Para 12 of the impugned order reads as under:

“We now take up the issue of implementing the other directions issued by the Hon’ble Appellate Tribunal. As per the direction no.(ii) the respondents/applicants were to quote the acquisition value per share to the petitioner/non- applicant within a period of one month. Admittedly, the applicants communicated the letter quoting the acquisition value per share vide letter dated 14.09.2017 (Annexure R-3). The price quoted per share is ₹1440/-. The petitioner/ non-applicant was to exercise the right to purchase the value of share holds of both the applicants for which he was to exercise the right within 15 days from the date of communication of acquisition value and then to settle the account within 2 months from the date of which such right is exercised. Admittedly, in the communication sent by the applicants the petitioner/non-applicant was offered the share at the discounted rate of 10% of the quoted rate. It was stated that the applicants were ready to purchase 10850 equity shares held by the petitioner/non-applicant and the deposit payment of ₹1,56,24,000/- calculated at the rate of ₹1440/- per share by way of demand draft in the name of petitioner/non-applicant within requisite period of 2 months for date of communication. It was also communicated that in case the petitioner/non-applicant decides to purchase the shares he was requested to deposit the amount at the discounted rate in the following manner:-

- (i) In the name of Jatinder Kumar- Answering Respondent NO.2:- ₹1,35,82,080/- for payment of 10480 equity shares***

- @ 1296/-(₹1440/- minus ₹144/- being 10% discount) vide demand draft drawn in the name of Jatinder Kumar.**
- (ii) In the name of Mrs. Puspha Devi – Answering Respondent NO.3:-**
₹90, 97,920/- for payment of 7020 equity shares @ 1296/- (offer Price ₹1440/- minus ₹144/- being 10% discount) vide demand draft drawn in the name of Pushpa Devi.”

10. Having gone through the earlier order passed by NCLT on 19.1.2017 which was modified on 21.7.2017, it is clear that it was for the respondents to make the initial offer within time specified on a rate for which they had to take their own risk as the appellant would have then got a chance to make counter offer on a discounted price. This is clearly from the order dated 21.7.2017. Annexure A-7 filed by the appellant shows that the valuer has given report on 21.7.2017 itself (which incidently happened to be the date of judgement passed by this Tribunal) giving valuation (as at page 158) of Rs/1322.60. The respondents appear to have offered @ Rs.1440/- per share. When we peruse the order dated 21.7.2017 passed by this Tribunal, there is nothing that on offer being made by Respondents, petitioner would be entitled to claim that his objections should be heard on the valuation and only then he would take a call whether or not he wants to purchase at the value made/offered by the respondents.

11. Thus the claim that the appellant wants to see the accounts so as to decide whether or not to buy or be bought out, such options were not left open by the order passed by this Tribunal on 21.7.2017. The appellant has not challenged the order dated 21.7.2017 in Supreme Court. Thus that order is final for the purposes mentioned.

12. As regards the grievance that the appellant was not restored as Director in time the order dated 21.7.2017 had not specified any time on that count. However, one would expect that it should be done in reasonable time. The Respondents claim they took decision of the restoration of appellant as Director in August, 2017 whereas the appellant is claiming that he was restored on 31.8.2018. The impugned order shows that the NCLT looked into the claim made by the respondents that in August 2017 they had decided in the Board Meeting to restore the appellant and ROC in court pointed out difficulties regarding filing on the portal of the MCA. This is in para 18 of impugned order. In any case the NCLT has recorded in para 15 of the impugned order that the claim of the appellant regarding non restoration is already filed before the High Court by way of "COCP". It is seen that petitioner raised this and other grievances in NCLT only when Respondents sought to buy his shares.

13. We thus do not find any reason to interfere in the impugned order. There is no ground made out in appeal for us to interfere. The appeal is dismissed. No order as to costs.

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

(Mr. Balvinder Singh)
Member (Technical)

bm