

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 303**  
**CP-46/ND/2024**  
**New IA-163/2024**

**IN THE MATTER OF:**

**M/s. SKC Consulting Pvt. Ltd. & Anr. ... Applicant/Petitioner**

**Versus**

**GT Cargo Fitting India Pvt. Ltd. & Ors. ... Respondent**

**Under Section: Sec. 241(1), Sec. 242**

**Order delivered on 09.05.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH**  
**HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Mohit Rastogi, Adv. Samridhi Shukla, Adv.  
Yuvnesh Sharma, Adv. Karan Trehan

**For the Respondent** :

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-163/2024:** The prayer made in the captioned application reads thus:

“23. *The Applicants prays that pending the hearing of the interlocutory application, this Hon'ble Tribunal may be pleased to grant the following interim reliefs:*

- (i) Restrain the Respondents from setting up or operating or participating in any business venture competing with the interest and/ or business of the Respondent No. 1 company, either directly or indirectly, themselves or through their affiliates or agents;
- (ii) Restrain the Respondent No. 1 company and/ or its affiliate companies, as well as the Respondent Nos. 2 to 7, their servants, agents and assigns, from, in any manner or form whatsoever, transferring or alienating creating any third party right, title and/ or interest in respect of, any business, contracts, commercial undertakings, arrangements, client data, etc. of the Respondent No. 1 company;
- (iii) Restrain the Respondent No. 1 company and/ or its affiliate companies, as well as the Respondent Nos. 2 to 7, their servants, agents and assigns, from, in any manner or form whatsoever, investing, leasing, selling, disposing of, encumbering, alienating or creating any

- third party right, title and/ or interest in respect of any property or assets (movable or immovable) of the Respondent No. 1 company;
- (iv) Pass a direction to the Respondents to disclose by way of an affidavit, details of all sales and purchase orders, loans, advances, remittances and any other monies withdrawn and received by the Respondent No. 1 company for the period between November 2023 till date;
  - (v) Pass a direction to the Respondents to disclose by way of an affidavit, on a monthly basis, all transactions being undertaken or proposed to be undertaken by the Respondent No. 1 company, including transactions by way of sale and purchase of its goods/ services and payments made towards procurement of goods/ services;
  - (vi) Ad interim reliefs in relation to above prayers; and
  - (vii) Any other interim reliefs in relation to above prayers that this Hon'ble Tribunal may deem fit.
24. The Applicants prays that this Hon'ble Tribunal may be pleased to grant the following final reliefs:
- (i) Allow the present interlocutory application;
  - (ii) Declare that the Respondent are in violation of the interim directions issued by this Hon'ble Tribunal by its order dated 11.03.2024;
  - (iii) Pass an order appointing an observer to oversee the affairs of the Respondent No. 1 company, with directions to such persons/ committee to report the current status of the Respondent No. 1 company's affairs (including in respect of its statutory compliance obligations) from time to time;
  - (iv) Direct the Respondents to furnish security, by depositing in an interest-bearing account of this Hon'ble Tribunal, an amount equivalent to the value of the Applicants' equity shareholding in the Respondent No. 1 company i.e. 13.06%, as determined by a fair and independent valuer; and
  - (v) Any other reliefs that this Hon'ble Tribunal may deem fit."

As can be seen from the relief sought in para 23 of the application (ibid), the Applicant expect us to pass an order for disclosure of the factual position regarding the affairs of the company. It is stare decisis that order for investigation or asking for disclosure of factual position is not within the scope of our jurisdiction in terms of the provisions of Section 242 of the Companies

Act. While exercising the jurisdiction in terms of the said provision, we need to rely upon such facts, which are established before us. In *Mohta Bros. (P.) Ltd. and Ors. vs. Calcutta Landing and Shipping Co. Ltd.* in Appeal from Original Order No. 86 of 1966, the Hon'ble High Court Calcutta ruled thus:

*“Full particulars must be given by a petitioner in an application under Sections 397 and 398 of the Act of acts of mismanagement and oppression. Vague and uncertain allegations of mismanagement and oppression, although they may constitute grounds for suspicion, do not entitle a petitioner to ask the court to embark upon an investigation into the affairs of the company, in the hope that in consequence of such investigation, something will turn up which will enable the court to grant relief to the petitioner. It is true that it may not always be possible for one or a group of shareholders to furnish particulars of acts of mismanagement, fraud, oppression, misappropriation or other improper acts, but such inability on the part of shareholders, who have no access to the books of the company, is by no means a ground for directing an investigation into the affairs of the company or for giving any other relief to a petitioner. The petitioner must set out the facts which constitute affairs of the company or for giving any other relief to a petitioner. The petitioner must set out the facts which constitute acts of mismanagement, misappropriation, fraud or oppression and prove, prima facie, at any rate, that on those facts an investigation is called for. If a petitioner fails to set out the facts and produce satisfactory proof in support of those facts no order for investigation into the affairs of the company can be made, nor can any relief be granted to the petitioner. A shareholder has no right of access to the books of the company, but denial of access to such books is not an act of oppression as has been held by this court in a Bench decision, *Rajya Lakshmi (Lalita) v. Indian Motor Co. Ltd.* MANU/WB/0037/1962: AIR1962Cal127 If a petitioner cannot make out a case of mismanagement and oppression, because he was unable to collect materials for the purpose, it is not for the court to direct the directors of the company to offer inspection of the company's books and accounts to enable a petitioner to collect materials for the petition under Sections 397 and 398 of the Act, or to direct investigation into the company's affairs and accounts by an independent person to bring out materials for further orders against the company, its directors or shareholders.”*

Though it is also one of the prayer made in Clause 24(3) of the application that this Tribunal should appoint an observer to oversee the affairs of

Respondent No. 1 company. Nevertheless, the application also involves such other prayer, granting what would amount to ordering a roving fact finding inquiry. For example, such relief is sought in prayer clause 23 (4 & 5) of the application. The interim application is containing multiple prayer including those which are beyond the scope of the provisions of Section 242 of the Companies Act. In the wake, **the application is rejected** being bad for misjoinder of causes and not maintainable for the reason that this Tribunal cannot pass orders for conducting fact finding inquiry.

Nevertheless, it would be open for the Applicant to prefer an appropriate application seeking such relief, which the circumstances warrant. No cost.

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**