

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

CP NO. 135/241-242(PB)/2020

IN THE MATTER OF:

Vinod Kumar and Ors.

..... Petitioners

v.

Sandeep Mehta and Ors.

..... Respondents

**SECTION: UNDER SECTION 241-242 OF THE COMPANIES ACT,
2013**

ORDER DELIVERED ON 17.11.2020

CORAM:

**SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Petitioner(s):

Mr. Mohit Chaudhary, Ms. Garima
Sharma, Advocates

For the Respondent(s):

Mr. Ananjeya Mishra, Mr. Ankit Sharma,
Ms. Preeti Kashyap, Advocates for R-1 to R-
8

ORDER

Per: SH. B.S.V. PRAKASH KUMAR, HON'BLE ACTG. PRESIDENT

HEARD ON: 14.10.2020

It is a unique case filed under Section 241-242 of the Companies Act, 2013 by the Directors and the Company as petitioners stating that some of the shareholders holding 40% shares in the company creating nuisance along with their muscle men at the Restaurant run by P4 Company and on 23.08.2020 extorted cash from the cash box of the Restaurant therefore treating their actions as prejudicial to the

interest of the company, sought for a direction against R-1 to R-8 to bring back the amounts taken away by them along with interest, to bring back the documents taken away by them, to restrain R-1 to R-8 from interfering with the affairs of the petitioner company, to direct them to amicably resolve the impasse in respect of demand of license fee dated 01.03.2020, to declare that in future shareholding meetings be mandatorily video graphed, to initiate prosecution against respondents under the Companies Act, 2013, inter alia asking interim reliefs for appointment of an observer to carry out the functions of the company, to restrain respondents from intimidating and threatening the long standing staff of the company, to restrain R-1 to R-8 from interfering with the affairs of the company, to restrain the respondents from directly or indirectly dealing with the landlord of the leased property where the restaurant is running and to direct the respondents to deposit the cash withdrawn, signed cheques and all company documents in the custody of the petitioners.

2. The petitioners submit that P1 to P3 comprises of complete Board with two directors having two groups, one is Tiwari Group with 60% and another is Mehta Group with 40%. Now the petition is filed by Tiwari group. This company (P5) has been running a hotel with the name of **“Garam Dharam Dhaba”** at NH-44, Jammu Delhi Road,



Murthal, District Sonapat with monthly collection of about ₹1.5Crore. P4 (Umang Tiwari) is the founder/promoter and the licensor of the trademark which gives identity to the business of the company. The petitioners have set-up the operations of the business and working well since 2008 till date. P4 invested about ₹1.7Crore in the company. This restaurant started working since 2016 over the land aforementioned, to start this business it appears they entered into a license agreement dated 12.10.2016 for use of this trademark "Garam Dharam Dhaba owned by P4 by P5 Company to its restaurant. In the year 2017, shareholding was increased. Ever since the company was doing very well and it has earned name in and around that place, especially because this trade name Garam Dharam Dhaba is familiar around Delhi. In view of the license agreement entered with P4 for use of trademark, he demanded the company to pay ₹1.8Crore toward license fee as agreed with the company, in the event of failure to pay, sought for issuance of 25% of the value addition Sweat equity shares in his favour. Thereafter owing to lockdown, this restaurant remained closed for some time. On 12.08.2020, when all shareholders while discussing about payment towards trademark or in the alternate to issue sweat equity shares to P4, a dispute arose between Tiwari Group and Mehta Group.



3. Thereafter R1 to R4 along with R5 to R8, the petitioners say, started creating nuisance by coming to restaurant and even taken out cash from the cash box by intimidating the staff of the restaurant. Sum and substance of this case is, there is some dispute with regard to payment over trademark among the shareholders thereafter some fight ensued. The allegation is the respondents holding 40% shares in the company not allowing the restaurant run peacefully and had also highhandedly taken the cash from the cash box.

4. On hearing the submissions of the petitioners' counsel, it appears to us the petitioners are asking policing of the restaurant under the garb of Section 241-242 of the Companies Act, 2013. In case any intimidation to the staff and forcefully cash taken out from the company, the restaurant authority and other management of the company should report to the police over the criminal action of the respondents. We could not understand how this issue would fall within the ambit of Section 241-242 of the Companies Act, 2013. Normally the shareholders mostly minority will invoke Section 241 against management with regard to conducting the affairs of the company stating that the actions of the management are prejudicial to the interest of the company. Here company matter is not in issue. Running of a restaurant and avoiding nuisance in the hotel is the



lookout of the management, they have to take appropriate steps available under criminal law and if required under civil law but not to ask NCLT to provide protection to the company to run its day to day business.

5. Section 241 has come into existence to provide remedy to the members when management of the company conducting the affairs of the company prejudicial to the interest of the members or the company. When anybody creates nuisance or highhandedly taken the money from the company intimidating the staff of the restaurant, it will become a criminal activity requires to be dealt with under criminal law but not under Section 241-242 of the Companies Act, 2013.

6. In view of the reasons mentioned above, for this Bench has not found any merit in this company petition filed under sections 241-242 of the Companies Act, 2013, this company petition is hereby dismissed in limine.

Sd/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

17.11.2020
VINEET