

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.-4
146/241- 242/ND/2020

IN THE MATTER OF:

Atul Kumar

Vs.

Amrop International Private Limited

....APPLICANT

....RESPONDENT

SECTION

U/s 241-242

Order delivered on 04.11.2020

CORAM:

CH. MOHD. SHARIEF TARIQ

MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA

MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Mr. Arun kathpalia, Advocate

For the Respondent

: Mr. Abhinav Vashisth, Sr. Advocate

For the Intervener

:

ORDER

Counsel for the petitioner is present. Counsel for respondent nos. 4 & 5 is present. Registry is directed to issue notice to rest of the respondents. Counsel for the petitioner is permitted to serve private notice on rest of the respondents by all modes and file proof of service along with affidavit on or before next date of hearing. Counsel for respondent nos. 4 & 5 is directed to file reply within 4 weeks. Thereafter, within two weeks the counsel for the petitioner may file rejoinder.

During the course of hearing it is brought to our notice by the counsel for the petitioner that respondent no. 1 company is holding 88% shares in respondent no. 2 and whole of the undertaking of respondent no. 2 has been transferred to respondent no. 3 which as per him is in violation of the provision of the Companies Act, as no special resolution has been passed by respondent no. 1 for transferring the undertaking of R-2 to R-3. It is further submitted that the financial statements

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for the year 2018-2019 are filed without the approval of AGM which is also in violation of the different provisions of the Companies Act.

As per the submissions of the counsel for the petitioner the transfer of the undertaking is only for 25 Lakhs, whereas for the year 2017-18 and prior to that as well, the revenue generated by R-2 was in crores and transfer of undertaking for an amount of 25 Lakhs is nothing but a fraud played by the respondents. The counsel for the petitioner further submitted that civil case(s) is pending before the civil court wherein certain issues are the same as raised in the present petition and his client is electing to continue the present petition as mentioned under Para 95 of the petition and undertakes to withdraw the civil case.

The counsel for the petitioner has pressed hard for seeking interim reliefs i.e., directions for maintaining the present shareholding pattern in respondent no. 1 company and *status quo* in relation to the business and assets of respondent nos. 2 & 3. In other words, the petitioner seeks an injunction against respondent no. 3 that no third-party interest should be created in the business of R-3 directly or indirectly and the assets of R-3 should not be transferred in any manner whatsoever.

The counsel for the respondent no. 4 & 5 vehemently opposed the filing of the petition by the petitioner before this Tribunal on the ground that whatever has been done by respondent no. 4, is pursuant to the family settlement which is clear from the pleadings filed by the petitioner before the Civil Court. The counsel for the respondent 4&5 has submitted that the contention of the petitioner that the undertaking is transferred for Rs 25 lakh is wrong and denied. He further submitted that respondent nos. 2 & 3 are not falling within the territorial jurisdiction of this Tribunal and the petitioner is not the shareholder in respondent nos. 2&3. Based on this, it is submitted that any order for granting interim reliefs may not be passed in favour the petitioner.

As per the record the petitioner is holding more than 10% shares in first respondent company which is also admitted by the counsel for respondent nos. 4 & 5. The counsel for respondent nos. 4 & 5 on being asked by this Tribunal that the family arrangement referred to is in black and white and the petitioner is signatory to such arrangement. In reply the counsel referred to e-mail communication(s) but not to any documents as suggested.

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In the facts and circumstances of the case on hand, we are inclined to direct first respondent company to maintain *status quo* as on date with respect to its shareholding pattern and direct respondents not to transfer or encumber the assets of R 2 & R 3 in any manner whatsoever till further orders. We also direct respondents not to create third-party interest in any manner whatsoever in the business of R-3 till further orders.

List the matter on 11.01.2021.

- Sd-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

- Sd-

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)