

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

Item No.-101

CP No - 136/241/242/ND/2020

IN THE MATTER OF:

Manish Goel

Vs.

Nikhil Kumar Goel

....Applicant

.....Respondent

SECTION

U/s 241-242

Order delivered on 14.10.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

:Mr. Mohip Datta Prashar, Mr. Dhruv Gupta and Ms. Sanya Lamba, Advocates

For the Respondent

:Mr. Rahul Tyagi, Mr. Ravi Data and Mr. Batesh Thakur, Advocates

As Per Mr. Abni Ranjan Kumar Sinha Member (Judicial)

ORDER (Dictated in open Court)

1. The present application has been filed on behalf of the petitioner praying therein the interim relief as well as the final relief. But in course of hearing Ld. Counsel appearing for the petitioner confined his argument only in respect of the prayer referred in para 21 (V) B and C.

2. We have heard the Ld. Counsel appearing for the petitioner, Mr. Mohit Chaudhary, Mr. Ravi Dutta, Ld. Advocate for R1, Mr. Rahul Tyagi, Ld. Counsel for R2, Mr. Dhruv Gupta assisted with Ms. Sanya Lamba, Ld. Advocate for R3. None appeared on behalf of the R4, who is Performa respondent.

3. Ld. Counsel appearing for the petitioners submitted that the respondent no. 2 is going to auction the property today i.e. 14.10.2020 of the petitioner, and that is why he confined his argument only in respect of the interim relief B & C, which relates to the auction of the property. He further submitted that under Section 242 (4) of the Companies Act, this Tribunal is empowered to exercise its power and restrain the respondent bank from proceeding with the auction proceeding under the SARFESI Act. He further submitted that the Hon'ble NCLAT in a decision in Company Appeal (AT) No. 256/2018 titled as



Amritsar Sawdeshi Woollen Mills Pvt. Ltd. Vs. Vinod Krishan Khanna and Ors. Appellate Tribunal 256 of 2018 held the NCLT can look into the matters regarding the revival of the Company. He further submitted that the petitioner is holding a good reputation and the petitioners are in this business since 1935 and if the property of the Company will be permitted for auction then the good will of the petitioner will be jeopardized. He further submitted that in Para 21 V B, he made a prayer to direct the respondent no. 2 to Co-operate in the revival process of petitioner no. 1 and 2 in the resolution and the revival of the petitioner company and for that purpose, the petitioner made subsequent prayer to restrain the respondent no. 2 to conduct the auction, which is going to be held today. He further submitted that it is due to the oppressive Act of respondent no. 2, the Company has suffered loss and so in order to save the reputation of the Company, the respondent no. 2 may be restrained from conducting the auction proceeding. Further, he submitted that the petitioners are showing their bonafide by offering 15lakhs to the respondent no. 2.

4. On the other hand Ld. Counsel for R-2 submitted that the auction proceeding has already been started and the bank has already received a bid of the rupees one Crore Rupees. He further submitted that the auction is going to be completed by 4 PM today i.e. on 14.10.2020. He further submitted that the respondent no. 4 had earlier filed a civil suit bearing CS no. 2147/2017 before the competent court and in that civil suit, the respondent bank appeared and raised a question under Order vii, Rule 11 of CPC and the Ld. Competent Court had pleased to reject the plaint by exercising its power under Order vii, Rule 11 of CPC. He further submitted that the company had also filed an application before the DRT and the DRT had dismissed that SA on 12.12.2018, so the interim relief of the petitioner may be rejected.

5. Mr. Dhruv Gupta appearing for R-3 submitted that the respondent bank has also filed an OA bearing no. OA/1482/2018, which is pending for consideration. He further submitted that this Tribunal cannot exercise its power under Section 241-242 to restrain the bank to recover the loan amount as it is not the proper form.

6. In reply, Mr. Mohit appearing for the petitioner submitted that he has not sought any interim relief against R-3.

7. Mr. Ravi Dutta for R-1 submitted that he has to file reply because some allegations have been made against him. He has not submitted anything on the submissions made on behalf of the petitioners by which the petitioners sought an interim relief against R-2.

8. In the light of the submissions raised on behalf of the parties, we have gone through the averments made in the application and we noticed that it is admitted fact that no act of oppression or mismanagement has been alleged against R-2 & R-3. The allegation is against R-1.

9. In course of hearing, Ld. Counsel for the petitioner failed to convince us on the point whether this Tribunal while exercising its power under Section 241-242 restrain a bank from proceeding under the provision of SARFESI Act. Of course, Ld. Counsel for the petitioner in course of arguments referred the decision of Hon'ble NCLAT but on query, he fairly admits that in that proceeding, bank was not a party rather it was between the persons.

10. It is settled principle of law, while exercising its power under Section 241-242 of the Companies Act, 2013, the Tribunal has to examine the facts mentioned under Section 241 referred under Section 241 (1) (a)(b). The relevant provisions of Section 241 (1) (a) and (b) provision are quoted below:-

241. Application to Tribunal for relief in cases of oppression, etc

(1) Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company;

or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

Mere plain reading of the provisions shows that the Tribunal before exercising its power u/s 242 of the companies Act examine this facts that affairs of the company ,is prejudicial and oppressive to the applicant or any other member or members. AS we have already stated in the aforementioned para that the petitioners no where in the application alleged any act of oppression against R-2. Therefore, we are of the considered view while exercising its powers u/s 242 of the companies Act 2013, we cannot restrain the bank from conducting auction, when the bank has proceeded in accordance with the provision of law under SARFESI Act.

11. For the reasons discussed above, we are unable to accept the contention of the petitioner, to direct the R-2 to Co-operate in the revival process and enter into the discussions with petitioner no. 1 & 2 for resolution and revival of petitioner no. 3 company and restrain R-2 from conducting the auction , which is going to be held today i.e. 14.10.2020 and also direct the respondent to enter into settlement in the interest of the petitioner no. 3 company. Therefore, we have no option but to reject the prayers of the petitioners to direct the respondent no. 2, Deutsche bank to co-operate in the revival process and enter into discussions with the petitioner no. 1 and 2 for resolution and revival of petitioner no. 3 company; and restrain respondent no. 2 from conducting the auction on 14.10.2020 and further direct them to

enter into settlement/resolution in the interest of the petitioner no. 3 company. Accordingly, prayer of the petitioner is hereby rejected.

12. However, all the respondents are directed to file detailed reply within three weeks from today. List on 10.11.2020.

Sd/-

(K.K. VOHRA)
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)