

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. No. 103/KB/2024
In
C.P. No. 29/(KB)/2022**

***An application under Rule 11 of the National Company Law
Tribunal Rules, 2016.***

IN THE MATTER OF:

Kamal Kumar Agarwal & Ors.

... Applicants

Versus

Viridhi Commercial Company Limited & Ors.

... Respondents

Date of Pronouncement: 1st July, 2024

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

APPEARANCE:

Mr. Jishnu Chowdhury, Adv.]	For the Petitioner
Mr. Aditya Garodia, Adv.		
Ms. Rashmi Singhee, Adv.		
Ms. Ujjaini Chatterjee, Adv.		
Mr. Pintu Ghosh, Adv.		
Ms. U. Garodia, Adv.		
Ms. Sangeeta Kar, Adv.		

Mr. Sanjay Kr. Gupta, PCS]	For the Respondent No.1 to
Mr. Rohit Kr. Keshri, Adv.		8, 10 &11
Mr. Ankit Chaurasia, Adv.		

ORDER

Per: D. Arvind, Member (Technical):

- 1.** The Court congregated through hybrid mode.
- 2.** Heard Ld. Counsels for the parties.

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3. This application has been preferred by **Kamal Kumar Agarwal, Alpana Agarwal and Rahul Agarwal (Applicants 1, 2 and 3 respectively)** against **Virdhi Commercial Company Limited, Bimal Kumar Agarwal, Karuna Devi Agarwal, Mudit Agarwal, Rashi Agarwal, Ashok Agarwal, Manjula Agarwal, Tushar Agarwal, A. Venkatesh, Glittek Granites Limited, Granite Mart Limited, A K Gowda and Malvika Sureka (Respondents 1 to 13 respectively)** seeking following reliefs:

- “(a) Injunction restraining the Respondent No. 10 from taking any steps in respect of passing any Special Resolution for dealing with, disposing of, alienating, encumbering or creating any third party right or interest in respect of assets, properties and undertakings of the respondent No. 10 or giving effect or any further effect to any steps taken for voting in favour of any Special Resolutions under Section 180 of the Companies Act, 2013;*
- (b) A forensic auditor be appointed for carrying out a forensic audit in respect of the affairs of the respondent nos. 1, 10 and 11 with a direction to submit report before the Hon’ble Tribunal;*
- (c) Appointment of a proper and suitable person as an Administrator to run and manage the affairs of Respondent No. 10 company.”*

Factual Matrix:

4. The respondent No. 1 holds 49.98% of shareholding of respondent No. 10 company. The applicants hold 4.25% shareholding in respondent no. 10 company. The applicants hold 25.99% in the respondent No. 1 company. The applicant together with respondent No. 1 have a majority shareholding in the respondent No. 10.
5. The applicant claims that there is a family settlement of Agarwals which was reached on 08.11.2021, between the three groups of the
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Agarwal family. The assets and properties of the family are held in the names of the family companies which are respondents No. 1, 10 and 11 in this application.

- 6.** This application has been filed under Section 241-242 claiming that respondents have acted in a manner oppressive and burdensome towards the applicants by acting contrary to the family settlement.
- 7.** On earlier occasion in connection with the disputes between the parties this Tribunal passed an Order that status quo shall be maintained in respect of all the assets and properties of respondents No. 1, 10 and 11 in an application filed by the applicants herein in I.A. No. 144 of 2022. This Order was passed subject to objections with liberty to file application, after filing reply in the main petition and to the IA to seek modification on variance of this Order of status quo. The said Order has not been assailed till date and no modification or variation has been sought for by the respondents till date.
- 8.** The applicants have also filed suit in Civil Court in T.S. No. 692 of 2022 before the Ld. 4th Civil Judge (Snr. Div) at Alipore. An Interim Order was passed directing injunction upon respondents from dealing with the properties and assets of the respondents No. 1, 10 and 11 companies. However, on 15th July the Ld. Court at Alipore vacated the injunction, consequent to which, the applicants preferred an appeal before the Hon'ble High Court at Calcutta. The Hon'ble High Court was pleased to pass an Order that status quo would be maintained till 31.01.2023 or until further Orders which ever is earlier. The said Order has been extended from time to time

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and lastly extended on 29.04.2024 extending it till end of July 2024 or until further Orders which ever is earlier.

- 9.** The applicants claim that during the pendency of the hearing of the company petition as well as this application, the applicants have received notices from NSDL that the voting shall be open for the period between 29.05.2024 till 27.06.2024 to vote in respect of resolution adopted by the respondents by the member of the respondent No. 10. Copy of the e-mail received from NSDL dated 28.05.2024 has been placed on record.
- 10.** From the said notice it transpires:
- a)** Board of Directors of the respondent No. 10 company from which the applicant no. 1 has been removed has decided to pass a special resolution under Section 180 of the Companies Act, 2013.
 - b)** Special resolution has been sought for approval of sale, lease or disposal of assets, for raising funds.
- 11.** The applicant claims that the member of respondent No. 10 has proposed to initiate voting on following issues:
- a)** To approve the overall borrowing limits under Section 180(1)(c) of the Companies Act, 2013.
 - b)** To seek approval under Section 180(1)(a) of the Companies Act, 2013, inter alia, for sale, lease or disposal of, creation of mortgage or charge on all the assets, properties of the companies.
- 12.** In view of the proposed board meeting and the resolution put for voting which according to the applicant would adversely affect their
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interest and consequently has filed this application seeking reliefs mentioned in Para 3 of this Order.

Ld. Counsel for the Applicants:

- 13.** Ld. Counsel for the applicant submits that proposed actions are directly in contravention on family settlement recorded in the document dated 08.11.2021. The Ld. Counsel further submits that they have neither received any explanatory statement to the notice nor they aware as to what is the total amount of money that shall be borrowed by the board of directors. According to him such information should be reflected in such special resolution in terms of Section 180 (2) of the Companies Act, 2013.
 - 14.** In any event, if borrowings result in pledging assets of the company, the same would be directly against the Interim Order passed by this Tribunal as well as by the Hon'ble High Court referred in earlier paras of this Order. Ld. Counsel further submits that the borrowing in excess of capacity by the respondent company would lead the company into insolvency. Ld. Counsel further submits based on financial statements downloaded from the website of the Bombay Stock Exchange, that the respondent No. 10 company has suffered a loss of Rs. 6 crores during the Financial Year 2023-2024 and the value of equity shares has been depreciated by almost 60% to 65% during the Financial Year 2023-2024.
 - 15.** The Ld. Counsel further submits placing reliance on the balance sheet for the Financial Year 2023-2024 that respondent 10 company has a borrowing of Rs. 1571 lacs whereas, the revenue generated from its operation is only about Rs. 609 lacs. Therefore, the Ld. Counsel alleges that there could be large scale mismanagement and
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a depreciation of about 60% to 65% of equity shares is not possible in one single year.

- 16.** If the voting lines left open for any further period, the present Company Petition shall become infructuous as assets of respondent 10 shall be dealt with and disposed by way of sale or lease or mortgage by the members of the respondent 10 company contrary to the family settlement and in violation of Order dated 05.01.2023 passed by this Tribunal.

Ld. Counsel for Respondents:

- 17.** In response, the Ld. Counsel for respondents submits that in the petition the particulars of the petitioners are not set out in accordance with Rule 20(5) of NCLT Rules. Ld. Counsel further submits that particular of the petitioners are not set out as per Annexure “B” of the NCLT Rules. The instant petition is neither drawn in the prescribed Form NCLT-1 nor particulars as required in Rule 20(5) of NCLT Rules have been given. Consequently, the Registrar ought to have refused to entertain the instant petition in terms of Rule 23 of the NCLT Rules. It is only the NCLT that has power to exempt from complying with any requirements of these Rules on sufficient cause being shown.
- 18.** Ld. Counsel further submits that reliefs sought by respondents No. 10 and 11 are outside of the jurisdiction of this Tribunal. The petitioners have filed petition under Section 241, 242 and 244 in respect of affairs of the respondent No. 1 company. However, the petitioners are seeking reliefs against the respondents No. 10 and 11 companies. Ld. Counsel further submits that registered office of respondents No. 10 and 11 are situated in Bangalore and
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consequently, this NCLT, Kolkata Bench does not cover the State of Karnataka where the registered office of the respondents No. 10 and 11 are situated.

- 19.** Ld. Counsel further submits that the petitioners have no cause of action against the respondents No. 10 and 11 and no cause of action has been disclosed in the petition. Ld. Counsel submits that it is an established principle of law that each and every company is a separate judicial person and shall be sued in its name.
- 20.** Ld. Counsel further submits that the petition has not made out a case for this Tribunal to form an opinion that the affairs of the company have been or have conducted in a manner prejudicial or oppressive to any member or prejudicial to public interest or prejudicial to the interest of the company.
- 21.** It is submitted that in a petition filed with respect to the affairs of the respondent No. 1 company this Tribunal cannot form an opinion that affairs of the respondents No. 10 and 11 company have been conducted in a manner prejudicial or oppressive to any member. Ld. Counsel further submits that petitioner is holding 4.25% in the capital of the respondent No. 10 company and consequently, does not meet criteria specified in Section 244 of the Companies Act, 2013. Ld. Counsel relies on Section 244(b) according to which not less than 100 members of the company or not less than 1/10 of the total number of members or the members holding not less than 1/10 of the issued capital of the company can file a petition under Section 241 in connection with oppression and mismanagement.
- 22.** Ld. Counsel submits that affairs of the affairs of the respondent No. 1 company cannot include the affairs of the respondents no. 10 and
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11. Ld. Counsel states that shares of respondent No. 10 Glittek Granites Limited is a listed company having 9754 share holders which itself proves it cannot be called as family company. Ld. Counsel further submits that it is a common practice to pass such resolution from time to time. The petitioners were trying to unnecessarily make an issue to a routine matter only for the purpose of delaying the conclusion of hearing in the company petition.

- 23.** When the matter was heard on 12.06.2024, and this Tribunal decided to make it “Reserved for Order”, the Ld. Counsel for respondent fairly submits that no asset will be alienated before disposal of this application.

Analysis and Findings:

- 24.** During the entire proceedings, reliance was placed on a document claiming to be a family settlement by the petitioners herein to contend that Virldhi Commercials Company Limited came to the petitioners by virtue of the settlement. The document relied as “*family settlement*” is minutes of the meeting held at Bangalore between Bimal Kumar Agarwal, Kamal Kumar Agarwal and Ashoke Agarwal on 08.11.2021. As per this document, Virldhi Commercials Company Limited would be equally split into parts by splitting all the assets and liabilities of the company between 3 parties who are signatory to the minutes of the meeting. After splitting Virldhi Commercials Company Limited will go to a petitioner herein namely, Kamal Kumar Agarwal and the two offshoot companies will go to Bimal Kumar Agarwal and Ashoke Agarwal.

- 25.** It is claimed in the application that the respondent No. 1 Virldhi Commercials Company Limited holds 49.98% of shareholding of
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respondent No. 10 company. The applicants hold 4.25% shareholding in respondent no. 10 company and hold 25.99 % in the respondent No. 1 company. The applicants claim together with respondent No. 1 have a majority shareholding in the respondent No. 10 and consequently eligible to file company petition under Section 241-242 read with 244 of the Companies Act.

- 26.** It is not in dispute that the petitioners hold only 4.25% of shareholding in respondent No. 10 company and only 25.99% in respondent no. 1 company. The respondents have challenged the maintainability of the petition under Section 241-242 in C.P. No. 29/KB/2022 which is pending and need to be adjudicated.
- 27.** The respondents have also challenged the jurisdiction of this Tribunal in dealing with the affairs of the respondent No. 10 company whose registered office is at Bangalore. The respondent vehemently contends that it would be NCLT Bangalore which will have the jurisdiction over the affairs of the respondent No. 10 company even this will have to be adjudicated.
- 28.** We also find that the suit filed in terms of family settlement and money decree is pending before Hon'ble High Court at Calcutta in FAT No. 229 of 2022 wherein the settlement with reference to respondent No. 1 in favour of petitioner herein is being dealt with. An Interim Order has been passed extending status quo with regard to assets/properties of the companies/family's assets that would vest with the petitioners if and when the suit for family settlement is taken upon and decided by the Hon'ble High Court at Calcutta and decided one way or other.

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- 29.** We have also noted that the Ld. Counsel for the respondents fairly submitted that the assets of respondent No. 10 would not be alienated till such time, this application is disposed of.
- 30.** Since the respondents themselves have submitted that no action would be taken for disposing of, alienating or creating any third party right or interest assets/properties or undertakings of the respondent No. 10, we direct that till such time the C.P. No. 29/KB/2022 is disposed of, the status quo be maintained, with regard to the assets of respondent No. 10 company.
- 31.** The petitioners have not been able to make out a case for appointment of forensic auditor or administrator at this stage and consequently, other prayers mentioned in the application are not granted. Accordingly, this **I.A. No. 103/KB/2024** is **disposed of**.
- 32.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 1st day of July, 2024.

PH(PS)