

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.A. 425 OF 2021

In

C.P. 4313/MB/2019

Under Section 210, 213, 241, 242 and 244 of
the Companies Act, 2013

Mr. Shripad M Salunkhe

...Applicants

V/s

Elina Solution Private Limited

... Respondent

Order delivered on: 16.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Mahesh Athavale, Mr.
Avinash R. Khanolkar,
a/w Ms. Surekha Yadav,
Advocates

For the Respondent : Mr. Pulkit Sharma a/w Ms.
Prachi Wazalwar, Ms. Arusha
Bapat and Ms. Sheba
Abraham Advocates

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Company Application CA 85/2021 is filed by Mr. Shripad M Salunkhe ("Applicant") in the Company Petition No. 4313 of 2019 ("Petition") under section 210, 213, 241, 242 and 244 of the Companies Act, 2013 seeking following reliefs
 - a. *To declare that the sale deed dated 20 September 2021 is illegal and the same be set aside*
 - b. *To give appropriate directions for initiating contempt proceedings against the Respondents for contempt of order of this Hon'ble Bench.*
 - c. *To direct respondents to maintain status quo with respect to all assets, properties and liabilities of the R1 company till the final disposal of the main petition.*
 - d. *To allow the applicant to implead the purchaser as a necessary party in the present application.*
 - e. *directions from this Bench to direct respondents to maintain status quo with respect to the assets, properties and liabilities of the R1 company.*
2. The petitioner is a subscriber to the memorandum of the company and is a promotor director of the company. The petitioner in good faith and on the basis of trust imposed by him on the respondents, continued to work for the company as a minority shareholding. The petitioner never realized about the ill intensions of the respondents to take over the company.
 - 2.1. The petitioner has worked hard till 2018 and generated a good business which can be seen from the increasing turnover of the company (Page 24 of the main petition). After Respondents started getting themselves appointed on the Board and involving themselves in the management, the company started losing its business and turnover of the company started to decrease.
 - 2.2. In 2018, The Respondents went ahead and removed petitioner as an employee and stopped his remuneration. Respondents also passed a

board resolution misusing their majority on the board to remove the petitioner from the authorized bank signatories of the company.

2.3. The respondents not only blocked the email access of the petitioner but also illegally searched his computer and documents by ransacking his cabin. The Respondents have been giving humiliating and insulting treatment to the petitioner and have verbally asked the petitioner to resign and never enter the office of the company.

2.4. The Respondents have not bothered to Respond to the various requests made by the petitioner for getting information and inspection of records and are now trying to sell off the assets of the company without providing proper information. The correspondence made by the petitioner after filing of the petition, asking for various minutes of meetings, inspection of documents, financial information and other records of the company are already attached as Annexure I to CA 85/2021 and the same are not attached again. The petitioner craves leave to refer to and rely upon the earlier pleadings in this regard. The petitioner on 20 March 2021 received an email from CS Tejaswini Jambhale, secretarial consultant of R1 company. The email contained a notice of a proposed board meeting on 29 March 2021 and a valuation report. After going through the notice, the petitioner observed that there is an agenda at item no.4 to consider sale of land of the company situated at Kasar Amboli village at Mulshi, Pune District. In the introductory paragraph of the said agenda item, it has been mentioned that the company is going through a very tough time financially, After COVID-19 outbreak, business of the company has been affected adversely and sales have also come down drastically. It further mentioned that the company has an outstanding bank loan amounting to Rs. 60 Lacs which it needs to pay off. In order to raise money, it is proposed that the company should sell off the land situated at Mulashi, Pune. It further mentioned that the company

has obtained a valuation certificate from the Government Registered Valuer and the realizable value of the said land works out to be Rs. 1,42,20,000/-

2.5. The Applicant on 23 March 2021 sent an email to the Board asking for the following:

A. Information on the gap between anticipated value of Rs. 1.71 crore (iv) of Valuation report and the realizable value Rs. 1.42 crore mentioned in Item No 4 of Notice.

B. In valuation the anticipated value is shown after completion, the applicant asked about the work to be completed and the cost of the same.

C. In Notice, why it is mentioned as due to COVID, company is required to repay banks urgently, when the Government has issued guidelines for not to harass, follow up for recovery?

D. Communication from bank asking for immediate payment of Rs. 60 lacs which is forcing the Respondents to sell NA land in the current worst economic recessionary situation.

E. The figure of Bank overdraft as per balance sheet of 2020 is Rs. 17 lacs which means the approx. Rs. 43 lacs added in 20- 21 which is well within a year for which it is being said that the bank is asking for repayment.

F. Disposal of excess funds to be received by proposed sale of land since the anticipated value is Rs. 142 crore and the amount of repayment of loan, as has been mentioned is only

G. Explanation on the statement "Company is going through tough time" with details of financials.

H. It has been said that the company is going through tough time and the Company has repaid entire Loans from Directors worth of Rs. 1.50 cr during the same period. Kindly explain the same.

1. March 2020 balance sheet is showing investment in equity unquoted, the details of the same such as name of Companies in which such investment is made, and need for the same be provided.

- j. Details of Advances, name of party, date of receipt, nature of work from Customers amounting to Rs. 4.24 cr (Rs 4.42 cr previous year), when the turnover of the company is only Rs. 2.83 cr in 19-20.
- K. Details of cost of Employees benefits Rs. 76 lacs in to employees, managers, directors
- L. The other income shown in P & L is worth of Rs. 1.28 crores, details of the same be provided.
- 2.6. The Applicant submits that the financial condition of the company is deteriorated due to mismanagement by the Respondents. The Respondents have taken out money in the form of heavy salaries which can be seen from the balance sheet of year 2019-20,
- 2.7. The Applicant further wishes to place on record that the said factory premises is rented by RI company to one of its associate company Mega Process Technology Pvt. Ltd for the period of five years since 2 May 2016. The rent agreement was valid till 30 April 2021. The rent paid for the factory Premises is Rs. 3,40,000/- per month by the company Mega Process Technology Pvt. Ltd. i.e Rs. 40.80 lakhs per annum. However, the valuation report fails to disclose about the same. There is no mention of rent at para 26 to 38. It clearly shows lack of transparency and mala-fide intentions of Respondents.
- 2.8. The Company is also getting substantial rent amount from another associate company called Exelon Projects Pvt. Ltd. and Mega Process Technology Pvt. Ltd. by renting office premises to them. RI Company owns Flats at Bhusari Colony is rented to Exelon projects Pvt. Ltd. at rent of Rs. 15000/- per month and Company owns Flats No. 401 & 402 at Anubhuti building Bavdhan are rented to Mega Process Technology Pvt. Ltd. at Rent of Rs. 50,000/- per month.
- 2.9. The Applicant states that the company could have extended the rent agreements with these companies or rent these premises to other companies after the agreements are over to ensure substantial fixed income to company instead of selling the assets at distress value in

the Covid pandemic period. Instead of this, the company has gone ahead and sold the property in contravention of the order of this Bench.

- 2.10. The form No. AOC -4 filed by the company for the Financial Year 2016-17 with Registrar of Companies proves that Ri company was getting rent from Mega Process technology Pvt Ltd and Exelon Projects Pvt. Ltd since FY 2016-17.
- 2.11. It is stated at the cost of repetition, the sale of this land has been done with mala-fide intentions in order make the company non operative in future so that other assets can also be sold to meet fictitious expenses such as high salaries of Respondents.
- 2.12. It may not be out of place to mention here that R5 has been drawing salary of Rs. 14 Lakhs per Annum from RI company as an employee. R4 is drawing salary of Rs. 17.17 Lakhs per Annum from R1. The Applicant apprehends that the Respondents are drawing salary from RI company but have been working for the benefit of their other entities.
- 2.13. The Applicant apprehends that the Respondents have purposely taken bank loan of Rs. 60 lacs and have utilized the same as per their wills and wishes. In the past board meetings, the Applicant has voted against the resolution for taking loans which are not actually required.
- 2.14. It may also be noted that in the past, R3 has given a Loan of Rs. 95 lakhs to company. It seems that this loan is repaid with interest in the year FY 2019-20. In similar way, it is possible for the company to raise funds form the respondent directors as they are having full control over the financial transactions of the company instead of selling land and factory of the company.
- 2.15. In the financial statement of 2019-20, other income is shown as Rs. 139.01 Lacs. The Respondents have failed to explain why the same is not being used to repay the loan amount.

- 2.16. As stated earlier, the respondent directors are not providing any data related to accounts, purchase, saics, salaries and other expenses on account of confidentiality to the Applicant for the last three financial years starting from FY 2018-19.
- 2.17. It is further important to note that the land was sold illegally on or about 20 September 2021 which is two days prior to serving of the reply to CA 85/ 2021. This clearly shows the mala fide Antentions of the respondents. There is no explanation as to why reply was not served on Petitioner before 4 May 2021 as directed by this Hon'ble Bench. Moreover, when the reply was ready on 30 August 2021 why it was not served till 22 September 2021 is also a question.
- 2.18. The Respondents did not even bother to inform the petitioner about the sale of land. The petitioner is still a director of the company and ought to have been made aware of the happenings. It goes to show that the Respondents are continuing with their stand of not disclosing any information or not involving the petitioner in any of the decision making of the company.
- 2.19. The petitioner received a circular resolution on 18 October 2021 for entering into a leave and license agreement for its flat No. 401 at Anubhuti Apartment. The petitioner apprehends that the Respondents may go ahead with sale of other properties in spite of there being a specific direction to maintain status que.
3. The Respondent No. 2 filed written submissions stating that The Respondent states that the AOR for Petitioner was personally present before the Hon'ble NCLT, Mumbai for the hearing of 20th July, 2021 wherein his request for extension of interim relief for expressly denied and thus the said AOR Mr. Avinash Khanolkar is merely dodging to file any affidavit on oath knowing that the same will amount to perjury. On the other hand the AOR for Respondent has no hesitation in furnishing an Affidavit to that effect.

- 3.1. The Respondents states that at the final stage of hearing of CA 425 of 2021, Hon'ble NCLT has again given liberty/opportunity to both the AOR's to again file an Affidavit, describing the hearing of 20th July, 2021. It is pertinent to note that the AOR for Petitioner neither filed any affidavit nor has he attended the hearings dated 18th April, 2024 & 01st May 2024 i.e. the final hearings in the subject Company Application. In the place of the AOR another Advocate Mr.Mahesh Athavale appeared. It clearly shows that the AOR for Petitioner is avoiding to make any false statements on oath and merely dodging to file an Affidavit.
- 3.2. Respondents states that the Petitioner has made various false and contradictory statements in the pleadings with regard to the event/occurrence on hearing of 20th July, 2021 as below:
- 3.3. It must be recorded that the Applicant has stated false and Contradictory statements in his Application and Rejoinder in the captioned matter that the matter has not come up for hearing after 12.04.2021, whereas the captioned matter was listed before the Hon'ble Tribunal on 20.07.2021, wherein Advocate on Record for Respondent No. 2 as well as CS Mahesh Athavale for the Petitioner had appeared for the Captioned Matter.
- 3.4. The Respondent states that the Hon'ble Tribunal presiding at Allahabad Bench in the matter of Anurag Agarwal & Anr versus Dwarika Infrabuildtech Pvt. Ltd. & Anr. [IA No.46/2022 IN CP NO.206/ALD/2020].The Hon'ble Tribunal held as under:

25..... From the above legal precedents, it is clearly emerging that any interim relief which is ordered to be operative till the next date of listing/hearing shall remain operative till the next date of listing/hearing only. There is no doctrine of automatic continuance of an interim order, which has been passed by the Court of law with clear intentions to have only a limited life to

operate.....However, thereafter, no such extension has been granted and therefore, such an interim order would lapse and would end as on the next date after it was last ordered to be extended, as prevailing in the present case.

26..... In view of the above discussions, we are unable to agree with the contention of the Ld. Senior counsel representing the applicant that the order would continue unless it has been vacated. We, therefore, hold that the interim order of status quo is no longer effective and has lapsed to operate beyond the next date as per the order dated 2nd August, 2021 and thus cannot be deemed to be continuing till the disposal of the main company petition. The present IA is disposed of accordingly with no order as to costs.

4. Heard the learned counsel and perused the material on record.

4.1. We note that this Tribunal had passed order dated 12th April, 2021 directing that “status quo with regard to the prime assets (immovable properties) of the Company shall be maintained till the next date hearing. The applicant has filled the application stating that the respondent no. 1 has disposed of an immovable property situated at village known as Kasar Amboli, Tal Mulshi, District Pune vide sale deed dated 20th September, 2021 for a consideration of Rs. 1,42,50000/-. The said sale deed has been executed by Mr Abhay Chaudhari the respondent no. 2 on behalf of respondent Company. It is a case of applicant that the sale deed was executed in defiance of order dated 12th April, 2021 mandating status quo in relation to all immovable properties. Per contra, the respondent no. 2 has submitted that the said order stood vacated on 20th July, 2021 where the status quo granted by order dated 12th April, 2021 was not continued. On perusal on order dated 20th July, 2021 we find that the order records only “list on 29.07.2021”.

4.2. The issue before us for consideration before us is whether the status quo order dated 12th April, 2021 continued and remain in force on 20th July, 2021. The applicant has relied upon the decision in the case of *High Court Bar Association, Allahabad v. State of U.P. & Ors. – Supreme Court (Criminal Appeal No. 3589 of 2023)*, wherein it was held that “*An order of vacating interim relief passed without hearing the beneficiary of the order is against the basic tenets of justice*”. The question in this case has arisen whether the hearing took place 20th July, 2021. This bench has directed the council for petitioner present on 20th July, 2021 to affirm that no hearing took place on 20th July, 2021 and the matter was simpliciter adjourn” to next date. However, no affidavit has been placed on record. Per contra the respondent has relied upon in the case of *Anurag Agarwal & Anr. Vs. Dwarika Infrabuildtech Pvt. Ltd. & Anr. (IA No. 46/2022 IN CP No.206-ALD/2020)* wherein the coordinate bench after considering the decision in the case of *Searle (India) Limited, rep. by its President Vs. M.A. Majid 2003(1) CTC 397; Karam Chand Thapar Brothers (C.S) Limited Vs. Nandini Roofing System Pvt. Ltd. and Ord. 2010 Sc Online All 2603; Arjan Singh Vs. Punit Ahluwalia and Ors. (2008) 8 Supreme Court Cases 348 held that “From the above legal precedents, it is clearly emerging that any interim relief which is ordered to be operated till the next date of listing/hearing shall remain operative till the next dated of listing/hearing only. There is no doctrine of automatic continuance of an interim order, which has been passed by the Court of law with clear intentions to have only a limited life operate”*. Since there is no sufficient matter on record to demonstrate whether any hearing took place on 20.07.2021 and in view of contradictory claims of the parties in this regard, this Tribunal is not in a position to conclude that the issue of continuance of the state was deliberated on 20.07.2021 . Thus, it cannot be said, in view of judicial precedent cited above, that the status quo order remained in force on or after 20.7.2021. The

Contempt necessitates wilful defiance of an Order. On account of cloud persisting over the continuance of status quo order, it can not be concluded that there was a wilful defiance of Order dated 12.04.2021 on the part of the Respondent. In the absence of any material before us we do not find it appropriate to proceed for alleged contempt of the order dated 12th April, 2021. Accordingly, the prayer (b) is dismissed.

4.3. The Applicant has alleged that as against anticipated value of Rs. 1.71 crore, the property in question was disposed of at Rs. 1.42 crores and the said sale was to take effect after completion. However, on perusal of sale deed, we find that there is no such stipulation in the sale deed and the sale of property has taken without casting any further obligation on the Respondent Company. As regards sale at a value lower than anticipated value, we find that applicant has not placed any cogent material to substantiate alleged anticipated value. Further, the difference between the alleged anticipated value and actual sale value is approximately 20% which cannot be said to be case of throwing away the properties of the respondent company at much lower price, considering the fact the anticipated market value is pure estimated value and cannot be said to be a benchmark value. Further, it is undisputed fact that sale has been concluded and the rights in the property have been vested in the purchaser. Further, it is not conclusively brought on record that the status quo order vide order dated 12th April, 2021 was in force after 29.07.2021. Accordingly, we do not find any reason to set aside sale deed dated 20th September, 2021. In view of this, prayer (a) is also dismissed.

4.4. Since, we have reserved the CP 4313/2019 for orders alongwith this application, we do not consider it appropriate to pass interim order as prayed in Prayer (c). Further, the purchaser is already arrayed as

Respondent No. 4 in the present application. The prayer (d) seeking impleadment of purchaser as Party Respondent is meaningless.

5. In view of the above CA 425 of 2021 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)