

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 234
11/163/14

IN THE MATTER OF:
Mr. Om Prakash Gupta

... **Applicant/Petitioner**

Versus

M/s. Apex FRP Chemicals Pvt. Ltd.

... **Respondent**

Under Section: 163

Order delivered on 02.02.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Gaurav Mitra, Adv. Rajesh Aggarwal

For the Respondent : Adv. Saurabh Kalia, Adv. Prakhar, Adv. Avik Sarkar

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

11/163/14: The only objection to the prayer made in the captioned petition espoused by Mr. Saurabh Kalia, Ld. Counsel appearing for the Respondent is that the prayer contained in the application is also the interim prayer in Company Petition 156(ND)13. Mr. Gaurav Mitra, Ld. Counsel appearing for the Petitioner tried to defend the maintainability of the application by submitting that when the prayer in the present application is for compelling the Respondent No. 1 to allow immediate inspection of statutory record as permissible for the member of the company under the Companies Act, 1956, the interim prayer made in Company Petition 156(ND)13 is only to appoint a local commissioner to visit the registered office of the Respondent No. 1 to prepare the inventory of the record and put his signature so that the record of Respondent No. 1 company are not tempered by the Respondent No. 2.

In the backdrop of such plea espoused by Mr. Gaurav Mitra, Ld. Counsel for the Petitioner, we had put a specific question to him that if the prayer clause (a) is the one, which is maintained by him in terms of the provisions of Section

163(3) read with Section 304(2)(b) & 307(d) of the Companies Act, 1956, under what provision, the interim prayer in the Company Petition 156(ND)13 for appointment of local commissioner to visit the registered office of the Respondent No. 1 to prepare the inventory of the record and put his signature is made. To such query, Mr. Gaurav Mitra, Ld. Counsel for the Petitioner could give the only answer that the wording of the two prayers is same. Nevertheless, in view of the averments made in the present petition as also the contents of the interim prayer made in Company Petition 156(ND)13, we are convinced that by filing the present petition as well as making the interim prayer in Company Petition 156(ND)13, the Applicant has sought to avail the remedy available to him in terms of the provisions of Section 163(3), 304(2)(b) & 307(9) of the Companies Act, 1956. Similarly, by using different wording, the same remedy cannot be availed by instituting multiple proceedings. In other words, the institution of multiple proceedings for availing same remedy is not permissible. In the wake, the application is rejected. Nevertheless, it is made clear that the Applicant would be entitled to press the interim prayer made in Company Petition 156(ND)13 before consideration of the main relief sought in the petition.

The petition is rejected.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)