

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH (Court- II)  
KOLKATA**

Comp. APPL. No.92/KB/2023

IN

C.P No.459/KB/2017

***In the matter of***

*An application under sections 58,59,241 and 242 of the Companies Act.*

And

**In the matter of:**

- 1. Dr. Narendra Sethia**, Residing at 3 Woodburn Park, “Malayalay” 8B & 8C, Kolkata-700020.
- 2. Madhumita Sethia**, Residing at 3 Woodburn Park, “Malayalay” 8B & 8C, Kolkata-700020.
- 3. Sindhu Commodities Private Limited**, an existing company within the meaning of the Companies Act, 2013 and having its registered office at 10B, Shakespeare Sarani, Kolkata-700071.

... Petitioners/Applicants

Versus

- 1. Aspective Commodeal Private Limited**, an existing company within the meaning of Companies Act, 2013 and having its registered office at “Ashoka House”, 3A, Hare Street, Room No. 302, Kolkata – 700001.
- 2. Rejendra Sethia**, residing at 7A, Queen’s Park, Kolkata, 700019.

3. **Kanishka Sethia**, Residing at 7A, Queen's Park, Kolkata, 700019.

... Respondents

Order Pronounced on : 26/04/2024

**Coram:**

**Mrs. Bidisha Banerjee :**        **Member (Judicial)**  
**Mr. Balraj Joshi :**            **Member (Technical)**

**Counsels appeared through Physically/ Video Conference**

Mr.Abhrajit Mitra, Sr.Adv.        ] For the Petitioner  
Mr.Shaunak Mitra,Adv.            ]  
Mr.Debayan Sen, Adv.            ]  
Mr.Souradeep Basu,Adv.         ]

Mr.Dhirendra Nath Sharma, Adv. ] For the Respondents  
Ms.Urmila Chakraborty,Adv.     ]  
Mr.S.Chowdhury,Adv.            ]

**ORDER**

**Per: Balraj Joshi, Member (Technical)**

1. Heard Ld. Counsel for the parties.
2. This is an application preferred by the Applicants under sections 58,59,241 and 242 of the Companies Act for the following reliefs:-  
“ (a) *An order be passed directing the respondents to forthwith provide to the petitioner No.1 the information and details as sought in the petitioner No.1's letters dated 8<sup>th</sup> July, 2023 and 18<sup>th</sup> July, 2023;*  
(b) *Ad- interim orders in terms of prayer above.*  
(c) *Such further orders or directions be passed as the Hon'ble Tribunal may deem fit and proper.”*
3. Ld. Senior Counsel Mr.Abhrajit Mitra, led us through the prayers in IA 92/KB/2023.

4. The applicants are the Petitioners in CP 459 of 2017. The applicants together hold 50% of the paid up, issued and subscribed share capital of the respondent no. 1 company and the petitioners no. 1 is also one of the directors of the respondent company viz. Aspective Commoddeal Pvt Ltd.
5. The requirement of having inspection of the Ledgers (Book of Accounts) has emanated from a letter dated 8.7.2023 (Page 13). In reply to this letter, the respondent has replied placed at page 14 of the application, depicting the fact that there was a proposal from one of the brothers namely Mr. Rajendra Sethia's offer to other Directors and brother namely Mr. Narendra Sethia for selling out his shares. This has led to the questions of valuation whereupon Mr. Narendra Sethia has asked for the Ledger (Book of Accounts) vide letter dated 8<sup>th</sup> July, 2023, wherein the applicant had requested for providing the books of accounts for last 15 years. The same was countered by Mr. Rajendra Sethia vide letter placed at page nos. 17 to 19 of the IA. This was further replied by Mr. Narendra Sethia on 18<sup>th</sup> July, 2022 reiterating his request for providing books of accounts.
6. Ld.Sr. Counsel for the Respondent submitted that this IA needs to be dismissed in limine. The same being in contravention to the extant law. He referred us to the provisions of Section 128 of the Companies Act, which reads as under:-

*“ 128. **Books of account, etc., to be kept by company.** – (1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transaction effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:*

*Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place:*

*Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.*

*(2) Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).*

*(3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed:*

*Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorized in this behalf by a resolution of the Board of Directors.*

*(4) Where an inspection is made under Sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.*

*(5) The books of account of every company relating to a period **of not less than eight financial years** immediately preceding a financial year, or where the company had been in existence for a period less than eight years in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order.*

*Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.*

*(6) If the managing director, the whole-time director in charge of finance, the Chief Financial officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the*

*company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees”.*

7. He stated that such a demand/request being against the law cannot be countenanced and deserves to be rejected. In the very first instance, we have considered rival contentions of the parties as well as perused the prayers. As rightly pointed out by Ld. Senior Counsel Mr. S. N. Mookherjee that there was no prayer in this regard in the application and as such the application needs to be rejected . However, we note that Prayers (c) have been made asking for any other order which may deem fit and necessary.
8. We are mindful of the fact that this IA has been filed in conjunction with the petition under sections 241-242 for oppression and mis-management, wherein a lot of acrimony has got generated with each side blaming the other. However, considering the fact that in such a deadlock situation wherein the two groups hold 50% shares each, it is always better in the interest of the company that one group buys out the other one and this proposition has been found to be workable proposition in number of cases of oppression and mismanagement.
9. We are also aware that there have been talks to this effect between the two groups and whereby the offers and counter offers have been made by them. The issue has got tangled apparently on the valuation of the company and due to the acrimonious relations between the Directors, a sense of mistrust is perceptible.
10. In view of the above, we hereby direct the Respondents to afford the opportunity to the applicant with one assistant to inspect the books of accounts maintained at the registered office of the company as required under section 128(c). The inspection shall be made in presence of the authorised persons of the company, from the respondent side.

11. We hope that both the sides shall act reasonably and workout solution amicably, so as to put an end to the dispute which shall be in the interest of company and its constituents.
12. With these directions this IA is allowed and disposed of.
13. Urgent Certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Bidisha Banerjee)**  
**Member (Judicial)**

Order signed on this, the 26th day of April, 2024

PJ