

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No. 144

IA/66(AHM)2022 in CP 65 of 2017

**Order under Rule 11 of the NCLT Rules, 2016**

**IN THE MATTER OF:**

Meeta Mathur & Anr.

.....Applicant

V/s

Sterling Greenwoods Limited & Ors.

.....Respondents

**Order delivered on ..28/09/2022**

**Coram:**

Dr. Madan B. Gosavi, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**Dr. MADAN B GOSAVI**  
**MEMBER (JUDICIAL)**

Rajeev Kumar Sen/Stenographer

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-I**

**IA/66(AHM)2022**

**in**

**Company Petition No. 65 of 2017**

**IA/66(AHM)2022**

[An application under Rule 81 and 11 of the NCLT Rules, 2016]

**1. Mrs. Meeta Mathur**

W/o Kunal Mathur,  
Having its address at:  
U-21, Green Park Extension  
New Delhi-110016.

**2. Mr. Ankit Mathur**

S/o- Kunal Mathur,  
Having its address at:  
U-21, Green Park Extension  
New Delhi-110016.

**....Petitioners/Applicants**

**Versus**

**1. Sterling Greenwoods Limited**

Having its address at:  
Sunrise Center, Opp. Indraprastha Tower,  
Drive in Road, Ahmedabad,  
Gujarat-380054.

**2. Umesh Lavingia**

Having its address at:  
Vrajbhumi, Garden City 1,  
Greenwoods Lake Resort Road Ognaj,  
Ghatlodiya, Ahmedabad.

**3. Bharat Lekhi**

Having its address at:  
401 Ambience Tower,  
Judges Bungalow Road,  
Bodakdev, Ahmedabad-380054.

**4. Virendra Singh Rawat**

Having its address at:  
F-39, Sur Sagar Towers,  
Nr. Sattadhar Society,  
Ahmedabad.

**5. Sudhir Kulkarni**

Having its address at:  
Poorvashodh No. 5, Garden City,  
Greenwoods, Ognaj,  
Ahmedabad.

**6. Milind Desai**

Having its address at:  
Shubham Mehta Park, Ambawadi,  
Ahmedabad-380006.

**7. Shrenik Trivedi**

Having its address at:  
44 Saumil Society,  
Drive in Road, Memnagar,  
Ahmedabad.

**8. Kantilal Panchal**

Having its address at:  
306 Kishan Apartment,  
Opp thakorevas, Thaltej,  
Ahmedabad-380059.

**9. M/s. Bigshare Servies Pvt. Ltd.**

Having its address at:  
A 802, Samudra Complex,  
Nr. Klassic Gold Hotel,  
Girish Cold Drink,  
Off. C G road, Ahmedabad.

**10. Kanchanbhai Baldevbhai Patel,**

Having its address at:  
29 Sentossa Park,  
Opp. Ashok Vatika,  
Ambli Road, Ahmedabad.

**.....Respondents**

**In the matter of :**

**Company Petition No. 65 of 2017**

[An application under section 241-242 of the Companies Act, 2013]

**Kusum B Kumar & Ors**

**....Petitioners**

**Versus**

**Sterling Greenwoods Limited & Ors.**

**....Respondents**

**Order reserved on: 20.09.2022**

**Order pronounced on: 28.09.2022**

**Coram: Dr. MADAN B. GOSAVI, MEMBER (JUDICIAL)**

**KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

**Present:**

For the Petitioners : Mr. Pavan S Godiawala, Ld. Adv.

For the Respondents : Mr. Navin Pahwa, Ld. Sr. Adv. along with  
Mr. Ravi Pahwa and Mr. Jaimin R Dave,  
Ld. Adv.

## **ORDER**

**[PER: Dr. MADAN B. GOSAVI, MEMBER (J)]**

1. This application is filed under Rule 81 and 11 of the National Company Law Tribunal Rules, 2016.

2. We perused the application and say filed by the respondents. We heard learned counsel Mr. Pavan Godiawala for the petitioners and learned senior counsel Mr. Navin Pahwa for the respondents at length.

3. By this application, the petitioners are requesting this Tribunal to remove the agenda/item no. 6 and 7 from the notice of the 30<sup>th</sup> Annual General Meeting (“AGM”) of the respondent no. 1 company scheduled to be held on 29.09.2022.

4. The agenda/item no. 6 is “Increase in the limits of the borrowings powers of the Board Section 180(1)(c) of the Companies Act, 2013”.

5. The agenda/item no. 7 is “Authorisation for delegation of powers to the Board to create charge by way of hypothecation, mortgage, pledge, lien on the assets of the company as per section 180 of the Companies Act, 2013”.

6. The petitioners have filed a company application (CP. No. 65 of 2017) under sections 241-242 of the Companies Act, 2013 against the respondents relating to the affairs of respondent no. 1 company- Sterling Greenwoods Limited. In the main company petition, one amongst the other relief/claim is to restrain the respondent from alienating/disposing of the assets of respondent no. 1 company. That petition is pending for adjudication.

7. Learned counsel Mr. Pavan Godiawala for the petitioners submitted that to make the above prayer in the main company petition to be infructuous, the respondents, who are controlling the affairs of respondent no. 1 company, have proposed to pass the resolutions relating to agenda/item no. 6 and 7 in the AGM dated 29.09.2022. He submitted that the respondents are thereby seeking absolute powers to dispose of the assets of respondent no. 1 company as per section 180(1)(c) of the Companies Act, 2013. If they proceed to dispose of the assets then the main company petition itself will become infructuous. He submitted that the petitioners have 17.07% shareholding in respondent no. 1 company. The company has been established by their late father B. Kumar. Their late father by way of a purported Will dated 25.01.2014 handed over the affairs of respondent no. 1 company to the respondent, who are mere employees of the company. Now, those employees are trying to dispose of the entire assets of respondent no. 1 company. The petitioners have challenged the authenticity of the said Will in the Civil Court and that suit is still pending. By the time, Civil Court decides the validity of the Will, the respondents may dispose of all the assets of respondent no. 1 company thereby making respondent

no. 1 company as a shell company. The petitioners being real beneficiaries may get prejudiced greatly. Hence, the relief claimed by the petitioners may please be allowed.

8. As against this, learned senior counsel Mr. Navin Pahwa for the respondents submitted that this application is one more attempt by the petitioners to protract the hearing of the main company petition. The petitioners have filed as many as twenty such applications, and they are pending. He further submitted that earlier in the year 2021 also, the petitioners had filed a similar application, bearing CP No. 45 of 2021 claiming the same relief. This Tribunal directed the respondents to call the petitioners as a special invitee in the meeting in which the policy decision relating to affairs of the company was sought to be taken and that application was disposed of. According to learned senior counsel, respondents are not going to dispose of the assets of respondent no. 1 company but at the same time, they are entitled to raise the finance to meet the requirement of working capital. Learned senior counsel also submitted that in Civil Court also the petitioners had filed similar application, it was dismissed by the Court. Now, the appeal is pending before the Hon'ble High Court. Since the petitioners did not get relief from the Civil Court, this application is filed. It is not maintainable.

9. It is not in dispute that by that Will dated 25.01.2014, the late father of petitioner no. 1 created the trust named as "B Kumar Family Trust". The respondents are appointed as the "Trustees". The Trustees are allowed to operate the affairs of respondent no. 1 company. It is not in dispute that petitioner no. 1, being the daughter of late B. Kumar, is one of the beneficiaries along with her mother. Petitioner no. 1 and her mother have filed a civil suit, bearing Civil Suit No. 387 of 2017, challenging the validity of the Will itself and it is still pending.

10. From the above facts, it is crystal clear that the respondents are managing the affairs of respondent no. 1 company as the Trustees only. It is not in dispute that petitioner no. 1 is the daughter of late B. Kumar, who has created the Trust by way of Will. Her mother Kusum was one of the beneficiaries of the Trust, now died, but she had filed suit challenging the Will itself.

11. We have gone through the copy of the Will subject to challenge in the Civil Court. It is mentioned in the will itself that if Trustees find it difficult to manage the affairs of the company then they shall transfer all equity in favor of the heirs of B Kumar (i.e., the petitioner). In view of this, if the respondents are not able to manage the affairs of respondent no. 1 company for want of funds, and if they are relying on the Will then as per the Will itself, they have to transfer all equity in favor of the petitioners. Be that as it may, the respondents are holding respondent no. 1 company's assets under Trust. They cannot dispose of the assets or create incumbrances against the assets of respondent no. 1 company unless permitted by the beneficiaries.

12. Learned senior counsel Mr. Pahwa submitted that as per section 180(1)(c) of the Companies, Act, 2013, the respondents/directors are borrowing the money/raising the loan to meet the requirement of working capital. They are permitted under the law. However, it is difficult for us to accept these submissions of learned senior counsel for the reason noted above. The respondents/directors are holding the equity of respondent no. 1 company under the Trust which was created by the Will and that Will itself is under challenge before the Civil Court.

13. In the Civil Court, the controversy relating to assets of the respondent no. 1 company is not a subject matter and it cannot be so because the Civil Court may not have jurisdiction to entertain such dispute arising out of the Company Act, 2013, and hence, only because

the Civil Court rejected the petitioners' some application has no bearing to decide the controversy before us.

14. It is submitted by learned senior counsel that the respondents that in this proceeding, the petitioners had filed a similar application in the year 2021 for the same relief. Now, again this application is filed challenging the agenda at serial no. 6 and 7 in the AGM to be held on 29.09.2022. This Tribunal has already considered this controversy.

15. We have gone through that order. In that order also, this Tribunal had directed the respondents to call the petitioners as 'a special invitees' of the meeting of the Board of Directors whenever there is an issue of policy related matter of respondent no. 1 company. Upon going through the agenda at serial no. 6 and 7, what we gather is that by taking recourse to section 180 of the Companies Act, 2013, the respondent may dispose of assets of the respondent no. 1 company which they are holding under the Trust. Trust was created under Will. The Will is under dispute before the Civil Court. In such a situation, we cannot permit the respondents to pass any resolution whereby any incumbrances are being created against the assets of respondent no. 1 company or against the disposal of the assets of respondent no. 1 company unless the Civil Court decides the validity of the Will. With this, we allow this application and proceed to pass the following order:

### **ORDER**

- I. The agenda at serial no. 6 and 7 in AGM dated 29.09.2022 stands removed.
- II. The respondents shall not pass any such resolution till the disposal of the main company petition whereby the assets of respondent no 1 company are being sought to be disposed of



or third party interest as against the assets is sought to be created.

III. With this, the application is allowed and stands disposed of.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**Dr. MADAN B. GOSAVI**  
**MEMBER (JUDICIAL)**

Rajeev Kr. Sen/Stenographer