

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

11.

**MA/189(MB)2017
IN CP/01(MB)2017**

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **15.02.2024**

NAME OF THE PARTIES:

Araya Mittara

Vs.

Secure Industries Pvt. Ltd.

SECTION: 241(1) OF THE COMPANIES ACT, 2013.

ORDER

MA-189(MB)2017

1. Mr. Sandesh Shukla a/w Mr. Mihir Mody and Arshan Lentin i/b M/s. K Ashar & Co., Ld. Counsel for the Applicant present. Mr. Sanath Bhojane i/b Renata Partners, Ld. Counsel for the Respondent present.
2. This is an application filed by the Applicant/Original Respondent Nos.1 to 3 prayed to direct that the Valuation Report dated 14th April, 2017 issued by M/s. Shanker And Kapani, Chartered Accounts (Mumbai) will not have consequences for the parties to the proceedings by reason of such report being arbitrary, untenable. Hence, this Bench may set aside the said valuation report.
3. Ld. Counsel for the Applicant submits that the Respondent No.1 M/s. Secure Industries Private Limited is a Company registered under the provisions of the Companies Act, 1956, having its registered address at Flat No. 34-C, Third Floor, Purvanchal Co-operative Housing Society Limited, Plot No.1E, Sector-1, Airoli, Navi Mumbai and engaged in carrying on the business of plastic caps and closures manufacturers. The

Applicant is an ex-director of the Respondent No.1 Company who filed the petition seeking reliefs sought in the main CP.

4. During the course of hearing of the main CP, this Bench suggested both the parties to explore the possibility of an amicable settlement so as to avoid a protracted litigation. While the Respondents had denied the allegations of the Applicant, however, in the aforesaid backdrop and with a view to buy peace they had agreed to an expeditious resolution of the dispute and had entered into the Consent Terms dated 4th January, 2017. The Tribunal had while disposing off the petition had granted liberty to the parties to approach the Bench in the event of any difficulty arises in performance of the Consent Terms arrived at and hence the present Misc. application is filed.
5. The Clause 7 of the Consent Terms dated 4th January 2017 shows that *“the payment and time limit in respect thereof amounts to petitioner based on valuation as aforesaid shall be decided by parties by mutually consent or shall be decided as per orders passed by Hon’ble NCLT as the case may be. It is agreed that 8% p.a. interest will be payable on the amount determined to be paid as per valuation on reducing balance basis. Payment to be made in four instalments in eight months, one instalment every two months, from the date of receipt of valuation report.”*
6. The Valuer was appointed with consent of both the parties and he had filed the valuation report on 01.03.2017. The report categorically stated that shares of the company are not listed on the any stock exchange and hence this method of valuation of market value is not applicable. The Net Assets Value (NAV) is taken into consideration and the shares are valued at the NAV methodology. The asset based valuation technique is based on the value of the underlying net assets of the business, either on a book value basis or realizable value basis or replacement of costs basis. This

valuation methodology is used where assets denotes earning capacity. As per this valuation methodology, the current value of equity shares fixed each as INR 92.81.

7. The Ld. Counsel for the Applicant further submits that the valuation is apparently erroneous on the face of the valuation and the valuer has not taken into consideration objections of the Petitioner submitted at the time of draft valuation; that the value is fixed as erroneous and without following the correct methodology.
8. Heard Ld. Counsel for the both parties and perused the records.
9. This Bench has taken a considered view that the Bench cannot sit as an appeal against the valuation report submitted by the Valuer, who was appointed with the consent of the both the parties. If, any party is not satisfied with the valuation report, it can be treated as a breach of consent terms and the parties can take appropriate steps for breach of the Consent Terms. This is not a forum to technically evaluate and examine the valuation report or to decide whether the method adopted by the valuer is appropriate or not. Hence, this Bench is not inclined to interfere into the technicalities of the valuation report submitted by the Valuer. Hence, this petition is devoid of merits. In view of the above, MA-189(MB)2017 is **dismissed**.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)