

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 03.04.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.778/2020 in CP No.666/241/HDB/2019
NAME OF THE COMPANY	Star Agrotech Pvt Ltd & 5 others
NAME OF THE PETITIONER(S)	Sanyog Kumar Thakuri
NAME OF THE RESPONDENT(S)	Star Agrotech Pvt Ltd & 5 others
UNDER SECTION	241

ORDER

IA No.778/2020

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**IA No 778/2020
In CP (IB) No. 666/241/HDB/2019**

U/s 424 of Companies Act read with Rule 11,39 and 135 of NCLT Rules, 2016

In the matter of M/s Star Agrotech Private Limited

Between:

Sanyog Kumar Thakur

..... Applicant/Petitioner

VERSUS

Star Agrotech Private Limited &Others

..... Respondent

Date of Order: 03.04.2024

Coram:

Hon'ble Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Hon'ble Sri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : S. Chidambaram

For the Respondent 1 and 2 : Anjali

For the Respondent 3 and 4 : Y. Suryanarayana

PER BENCH

1. The present application has been filed by Mr. Sanyog Kumar Thakur hereinafter referred as “**Applicant**”, who is a subscriber to MoA and promoter director of company holding of 72000 equity shares (24%) of the company seeking the following relief:

- To issue summons for presence of Mr. Govind Prasad Rajgarhia (Respondent No 2), Mr. Nishant Raj (Respondent No 3), Mr. Dayakar Reddy Seelam (Respondent No 4), Mr. Mahender Kumar Jain (Respondent No 5) and permit to cross examine them and
- Permit to examine Mr. V. Parthasaradhi and Mr. M. Kutumba Rao

2. Brief averments of the application:

The Company Petition was filed by him showing the oppressive and mismanagement acts carried out by Respondent 2 to Respondent 5 hereinafter referred as “**R2 to R5**” and he avers that Respondent No 2 (“**R2**”) has unduly influenced him stating to him that he sold his seed business to French Multinational company at hundreds of crores of valuation and was promised the same kind of valuation to R1 company’s shares and assured the present applicant transfer his 76% of shares without consideration and promised very profitable exit for 24% shares which are held by him within a period of three years.

3. It is submitted that lured by the promise of R2 in 2015, shares have transferred to R4 who is none other than benami of R2 and avers that this transaction was affected to circumvent the law wherein R2 would not be able to acquire the shares of R1 company during the year 2015.

4. In the year 2018, R4 has transferred 665 share to R2, R3 and wife of R2 and the present applicant was not paid a single rupee consideration so far for the 76% transferred to R4. In the said period petitioner was Managing director during which R2 an R3 have authenticated balance sheet contrary to the provisions of the Act and it was averred that

all statutory records are under the control of respondents and they are refusing to inspection of records by petitioner.

5. Respondents are tampering and manipulating the statutory records of company and the bank accounts were also operated by the respondents group and two such incidence are pointed out in Para 9 of the Company Petition.
6. Serious allegations were made with respect to inflated current liability from Rs 6 crores to Rs.18 crores, through Mr. V. Parthasaradhi and Mr. M. Kutumba Rao, who are Companys customers. Mr. V. Parathasaradi and Mr. M. Kutumba Rao have no means to advance crores of rupees to Company. These funds may be dummy entries without actual infusion of funds or amount of R2 and his group's funds, being routed in Company's in order to avoid tax scrutiny.

Contention of Respondent no 1:

7. Respondent no 1 in his counter affidavit contends that the instant application calling for discovery and production of documents is frivolous and has been filed solely with an intent to delay the proceedings and tarnish the reputation of the respondent.
8. The application is premature and wholly misconceived and not maintainable as they raised counter allegations against present petitioner bringing on record the suppressed facts and criminal misdeeds of petitioner and to that counter, the petitioner has failed to file a rejoinder despite the directions from this Hon'ble Tribunal.
9. The petitioner has approached City Civils Court, Secunderabad and filed O.S No 37 of 2020 against Respondent 1 to 4 seeking for a Memorandum of Understanding dated 15.12.2024 to be declared as null and void.
10. Petitioner is trying to use this Tribunal as means of collecting evidence without having prima facie case in his favour. The proceedings before the Tribunal are summary in

nature and the provisions of Code of Civil Procedure strictly do not apply. Although the Hon'ble tribunal is vested with power to conduct trial under Section 424 off Companies Act, it is not required to conduct trial when the issues are capable of being decided based on documents annexed to the petition. A reliance was placed on decision of Ho'ble Tribunl, Mumbai Bench in *M/s Blend Colours Pvt Ltd v M/s Vast Industries Pvt Ltd* which stated that the proceedings before NCLT are summary in nature to preserve the objective of constitution of Tribunal.

11. The application is beyond the scope of Rule 43(1)(b) of National Company Law Tribunal Rules, 2016, Although the tribunal is empowered to call for further information or evidence by way of powers vested under said rule. Upon bare perusal of said rule it is disclosed such power to call for documents to ascertain any information shall be exercised only it is necessary for the purpose of enabling the orders passed in petition or application in the opinion of Tribunal.
12. In the matter of *Bharat Bhushan Narang v. Sudershan Kumar Manchanda* , the Hon'ble High Court of Karanataka has held that such power to call for further information or evidence may be exercised only in the fact situation of the case in its opinion, the recording of evidence is necessary.
13. Further reliance was placed on the constitutional bench judgment of *Sasanagouda v Dr S.B Amarkhed & Others*¹ wherein it was held that passing of such orders is a discretionary power of the court and shall be exercised only if the court thinks that production of documents are necessary to decide the matter in question. In the present application the applicants did not prove to the necessity of documents.
14. Petitioner must satisfy the Tribunal that further information or evidence is necessary for adjudicating the petition and will lead to revelation of crucial facts.
15. It is well settled law that it is not job of Judicial/Quasi-Judicial Authorities to embark upon fishing and roving enquiry. Therefore it is sine qua non that prima facie it should

¹ AIR 1992 SC 1163

be shown as to how the call for further information or evidence will aid in adjudication of present case.

16. Considering the gravity and seriousness of allegations levelled against Petitioner by the Respondent No. 1 in its counter-affidavit and the ensuing conduct of the Petitioner in avoiding such allegations, it may be apposite to state that the instant Application should have been filed by the answering Respondent. Application under Rule 11 and Rule 131 may be preferred by the Respondent at an appropriate stage in the proceedings and in a proper manner.
17. The Petitioner has filed the instant Application to misdirect the proceedings to ensure that his criminal and civil wrongdoings do not come to light before this Hon'ble Tribunal as a gross abuse of process of law. Without prejudice to the contentions raised above, the answering Respondent adverted to para-wise reply which are set out in following points.
18. The averments made in paragraphs 3 (1) and (2) are denied as being false and baseless. It is submitted that that the entire premise of the Petitioner's case is based on assumptions and probabilities that are merely a figment of the Petitioner's imagination and have already been countered in the reply to the main Petition. In fact, the Petitioner has not produced an iota of evidence to substantiate the allegations levelled against the Respondents.
19. The Petitioner alleges that the balance sheet was authenticated by the Respondent No. 2 and 3, however, it was done only because the Petitioner refused to authenticate and as the same has to be filed within the stipulated time. Further, it is reiterated that the counter filed by the 1 Respondent was adopted by Respondents No. 2 to 4 and also filed a memo to its effect which has also been recorded by this Hon'ble Tribunal in its order dated 16.03.2020².

² Copy of order dated 16.03.2020 recording filing of memo has been filed as Annexure R1.

20. Averments made in para 3 (3) are denied as being false and baseless. The allegations of dummy entries in the name of Mr. M. Kutumba Rao and Mr. V. Parthasaradi are also false and baseless. It is reiterated that such transactions were made in due course of business as Mr. M. Kutumba Rao and Mr. V Parthasaradi are organizers from the farmers. In fact, the Petitioner had not made any payments to the said seed organizers and on the other hand, the instigation of the petitioner himself, the said persons had approached the 1st Respondent numerous times demanding payments.

21. Contention of Respondent No 5

Respondent is the Statutory Auditor of the Company and is a Professional who is not involved in the day to day affairs of the Company. The Statutory Auditor audits the accounts of the Company based on the information provided and gives his report to the Board of Directors of the Company. He is not involved in the day to day business of the Company.

22. There are no specific grounds or findings based on which the Applicant herein is seeking cross examination of the answering Respondent and the issuance of the summons to the answering Respondent. The only ground stated by the Applicant herein is that since Respondent Nos. 2 to 5 have not filed the counter to the main Company Petition, Respondent Nos. 2 to 5 are avoiding any direct reply by way of an affidavit to the serious allegations raised against them and so in the interest of justice and to elicit the truth there is a need to cross examine Respondent Nos. 2 to 5. The said reason provided by the Applicant herein is frivolous and is untenable. It would mean that in all the cases where there are no counters filed by any of the respondents, there is a need for cross examining the said respondents.

23. The Applicant herein has not enclosed a single document to prove the manipulation and tampering of the statutory records. Further an Auditor is a neutral person and his report is based on the material supplied to him. The audit report is a self-contained document and there is no reason to summon. The Applicant has not stated any reason or facts

which entitles him either to make the answering Respondent as Respondent No. 5 or to summon him for cross examination.

24. It is submitted that the proceedings before the NCLT are summary in nature and the scope of the proceedings cannot be expanded unless compelling and convincing reasons are placed before this Authority.
25. Heard both the counsels and Pursued the records.
26. This Tribunal is empowered to call any witness or documents for advancement of justice. However, no party can be allowed to use this tribunal as a tool for collection of evidence as it is duty casted upon the parties to bring evidence.
27. It appears that the applicant is trying to misuse the power of this Tribunal because he is not only a subscriber to MoA but also promoter director of company implying that he has a right to access the statutory records. Therefore this Authority cannot issue summons and allow cross examination. Similarly, there is no ground for calling or summoning any witness or document as the applicant has failed to justify his claim.
28. Subject to the above observation's, the application is accordingly disposed off.

SD/-

SANJAY PURI
(MEMBER TECHNICAL)

SD/-

RAJEEV BHARDWAJ
(MEMBER JUDICIAL)

Namratha