

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

CP No. 6 (ND)/17

PRESENT: MS. INA MALHOTRA
HON'BLE MEMBER(J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
03.07.2018

NAME OF THE COMPANY: Mr. Brijesh Uppal Vs. M/s Tryambakam
Logistic Pvt. Ltd. & Ors.

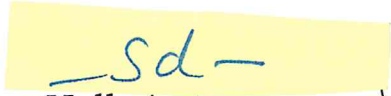
SECTION OF THE COMPANIES ACT: 241-242

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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Present: None

ORDER

Through argument had been addressed, the written submissions are
not on record. Be reserved for orders.


(Ina Malhotra)
Member (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CP No. 6(ND)/2017

In the matter of

Brijesh Uppal,
H. No. V11, Green Park,
New Delhi

.....Petitioner

V/s

Tryambakam Logistic Pvt. Ltd.
Registered Office at # L-126 A,
Gali No. 5, Mahipal Pur Extension
New Delhi

....Respondent No.1

Parvesh Jain
Office at # L-126A,
Gali No. 5, Mahipal Pur Extension
New Delhi

Also at

H No. # 124A, Friends Enclave,
Nangloi New Delhi

.....Respondent No.2

SECTION: 241-242

Order delivered on 31.08.2018

Present:

For the Petitioner: Mr. Amit Kochar, Advocate

For the Respondent: Mr. Nitin Mittal & Mr. Prithv Advocate

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ORDER
PER SMT. INA MALHOTRA, MEMBER (J)

The present petition has been filed under Section 241-242 of the Companies Act, 2013.

2. The facts of the case are that the petitioner and Respondent no. 2 incorporated the respondent company under the name and style of "Tryambkam Logistics Pvt. Ltd.". The petitioner along with Respondent no. 2 were its only two shareholders, each having equity of 50%. Both were Directors of the company and started this venture in May 2016 by contributing Rs. 5 lakhs each towards the paid-up share capital. Respondent no. 2 was already in the same business of logistics which was running under the name of M/s. MTS Logistics, a company in which he held 80% equity. At his instance, the registered office of the Respondent Company was maintained in the same building as that of M/s MTS Logistics. The business of Respondent no. 1 started with purchase of 5 trucks worth Rs. 63 lakhs. In addition, they spent a huge amount on fabrication. All this necessitated availing finance from the bank.

3. The main grievance of the petitioner is that Respondent no. 2 started syphoning off the business to his other company viz. MTS Logistics which was later impleaded in the present case as Respondent

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No.3. The trucks were hired by Respondent No. 3 against payment made to Respondent no. 1. It is alleged that soon thereafter Respondent no. 2 started raising problems. He was unhappy with the drivers engaged by the petitioner and replaced all them. This was done with the specific and oblique purpose to ensure that the drivers would not report to the petitioner and he should not know where the trucks were plying. Respondent No.2 misused the vehicles for his personal gains. The petitioner relies upon the income generated for one month to show the potential income of the business that would have generated per month. The revenue generated in the subsequent months declined sharply. It is alleged that the asset of the Respondent no. 1 Company has been used for the business of Respondent No.3 without remittance to the Respondent Company which has resulted in defrauding the petitioner and causing financial loss to the Respondent No.1. The affairs of Respondent no. 1 Company were totally mismanaged as after 15th August 2016, Respondent No.2 did not deposit the business proceeds in the bank account of the company. Lack of funds resulted in defaults in payment of EMIs towards the financial assistance availed from banks. The trucks were finally surrendered to the banks by Respondent No.2 and sold without consulting the petitioner, muchless after passing any resolution in this respect. This unilateral of action of Respondent No. 2 not only



caused a loss to the Respondent Company, but also ensured that its business comes to grinding halt.

4. In the reply filed by the Respondent, the allegations are denied. It is submitted that no relief survives in the present case as the trucks, which formed the sub-strata of the business have been repossessed and auctioned by the financier viz. the ICICI Bank Ltd. It is further submitted that the Respondent Company availed the financing for the purchase of the 5 trucks on the personal guarantees of Respondent no. 2 and 3. Respondent No.2 submits that the said business venture was started with the understanding that the trucks would be hired exclusively for the use of Respondent no. 3 and a hiring agreement was also executed. Respondent No.2 made counter allegations that the petitioner who handled the operation of the company, has in fact, mismanaged by paying the drivers without submitting any account and therefore the petitioner is liable to account for a sum of Rs. 3,71,500/- withdrawn from the banks on grounds of disbursing salaries and expenses to the drivers. Reimbursement of expenses was not justified as Respondent no. 3 actually paid the drivers for necessary route expenses. In the absence of any vouchers produced, the said amounts withdrawn could not be reconciled and hence amounted to illegal withdrawals. Respondent No.2 has made counter allegation that on account of illegal and unjustified withdrawals leading to depletion of funds in the Bank account, the EMIs

to be paid to the Banks were dishonoured. It is submitted that it was due to the non-cooperation of the petitioner that the business came to a complete halt. The bank therefore exercised its lien under the loan agreement and repossessed the hypothecated vehicles and auctioned them.

5. Respondent No.2 does not deny the use of the vehicles by his other company respondent no. 3, nor does he deny holding 80% equity therein, the other 20% being held by his brother. He has produced an agreement for such an arrangement executed between him and Respondent No.3. This agreement has been signed by Respondent No. 2 on behalf of Respondent No.1. He has however not been able to produce any resolution which authorized him to enter into a business arrangement on behalf of Respondent No.1 with Respondent no. 3 in which admittedly he is also a Director, the other Director being his brother.

6. The grievance of the petitioner borders on the allegations of total mismanagement of the business of Respondent no. 1 Company. It appears to be an admitted fact that the asset of Respondent no. 1 Company, being the 5 trucks, were used for the benefit of Respondent no. 3 in which Respondent no. 2 was a beneficiary. Leasing of the vehicles without proper authorization or a resolution passed was illegal. The petitioner denies that the trucks were under an exclusive contact with

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Respondent No.3. He has placed reliance on several documents, being Forms 59 to show that the trucks were hired by other agencies also.

7. As the case of Respondent No. 2 is that the trucks were for the exclusive use of Respondent No.3, he has failed to provide details of the business accounts before this Bench, muchless provide it to the petitioner. If he was incharge of the operations and hiring, there is no explanation why sufficient revenue was not deposited in the Bank or why the EMIs of the Bank loan were not paid. There is no explanation why the trucks were not routinely hired to other parties if sufficient business could not be generated through Respondent No.3. Clearly the intention of Respondent No.2 was to use the trucks for the business of Respondent No.3 and keep the money to himself without providing any record. It cannot be denied that the entire action of Respondent no. 2 lacked transparency with no accountability for the revenue generated for plying the trucks of respondent company for the use of Respondent No.3. As a Director, in charge of the business operation of Respondent No.1, he held a fiduciary duty to the other shareholder to be accountable for every transaction made. The allegations of the petitioner that he used the trucks for the business of Respondent No.3 without sharing details and without maintaining any documents to conveniently pocket the money merits consideration. This clearly amounts to cheating and defrauding the other shareholder. Profiting from the asset of Respondent no. 1

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Company by using it for the business of Respondent No.3 company, and not paying anything towards it, tantamounts to mismanagement and being oppressive to the petitioner. The surrender of vehicles (being the asset of the Respondent Company), however justified it may have been, was a unilateral decision of respondent No.2. The decision of respondent no.2 to keep the petitioner, an equal shareholder, out of the loop was an autocratic decision in his personal capacity and cannot be said to have been done in the interest of the Respondent Company. Moreover, it cannot be ruled out that the trucks were auctioned to any related party of Respondent No.2 for his personal benefit, as there is neither any affidavit nor any detail provided of the buyers.

8. The petitioner has prayed to be compensated by the Respondent. It is his case that the revenue generated in the first month of business was Rs. 10 lakhs. He accordingly seeks reimbursement on an average basis for 5 months i.e. Rs. 50 lakhs. Such a prayer is unsustainable as it is not founded on cogent and calculable evidence. However, given the fact that the Respondent No.2 undeniably plied the logistic service of the Respondent Company exclusively for his parallel business, without any accountability or payment made in the account of Respondent No.1, the petitioner is entitled to equitable relief. In the absence of any tangible asset of the respondent company, the share value has come to a naught. The petitioner however has relied upon the average kilometres plied and

the revenue generated in the first month itself. The use of the trucks by Respondent No.2, bearing the logo of Respondent No.3, was also established by the petitioner by seeking seizure of one truck plying between Faridabad and Pune for which a police complaint was also made. It would therefore meet the ends of justice to award damages to the petitioner in the sum of Rs. 20 lakhs for not accounting for the use and revenue generated from the asset of the Respondent Company viz. the 5 trucks by respondent no.2 exclusively for his parallel business. Mismanagement of the business is writ large as there is no cogent explanation why sufficient income was not generated to meet the business expenses and payment of the EMIs to the Bank, leading to a total collapse of the business. The exclusive use of Logistic Services by Respondent No. 2 for Respondent No.3 is also incomprehensible if it could not generate enough income to meet the EMIs, let alone be a profitable venture. Use of the trucks by Respondent no.2 for his parallel business without payment in the account of Respondent No.1 gives rise to the inevitable conclusion that the petitioner suffered injustice and oppression at the hands of Respondent No.2. Respondent No.2 has also not been able to explain the sharp decline in the revenue from business operation vis-a-vis the admitted revenue generated in the first month. No reply has been filed by respondent No.3. However as respondent No.2 has categorically admitted that he used the trucks for the business of

Respondent No.3, both Respondents No. 2 & 3 are jointly and severally liable to compensate the petitioner for damages awarded.

9. In view of the above, the petition is disposed off with the following directions:

1. The petitioner is entitled to a compensation of Rs. 20 lakhs from Respondents No. 2 & 3.
2. The ROC is directed to initiate action against Respondent No.2 for the deliberate violation for the statutory provisions of Section 188 of the Companies Act. Penal action to be initiated by the Roc shall be followed up by the petitioner.

Copy of the order be sent to the ROC.

Petition under Section 241-242 of the Companies Act stands allowed in favour of the petitioner in terms of the above.



(Ina Malhotra)
Member (J)