

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

30(ND)/2016

In the matter of

Bhanvi Buildtech Pvt. Ltd. & Anr.

...Petitioners

Vs.

JSS Buildcon Pvt. Ltd. & Ors.

.... Respondents

Order delivered on 31.08.2018

SECTION OF THE COMPANIES ACT: 397/398

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SH. S. K. MOHAPATRA, HON'BLE MEMBER (T)

Present:

For the Petitioner:

Mr. Kunal Sabharwal Advocate.

For the Respondent:

Mr. Krishnendu Datta &

Mr. Rahul Malhotra, Advocate

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

Petitioner No. 1, a registered company, has alleged holding 25% equity in the respondent no. 1 company. Petitioner no. 2 is its Managing

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director and controls its affairs. In view of the petitioner no.1's stake in the Respondent Company, petitioner no. 2 was nominated on the Board of Directors to represent the petitioner group.

2. The grievance of petitioner No. 2 is his illegal and unlawful removal as a Director. He is also aggrieved by Respondent No.4 Company selling its stake to Respondent No.3, an outsider, in complete violation of the Articles of Association of the Respondent Company. He has also alleged that respondents are instrumental in commissioning various acts which are oppressive and detrimental to the interest of the petitioner company. The petitioners have therefore filed the petition under Section 241 -242 of the Companies Act.

3. During the course of proceedings, the respondents have filed CA No. 190/2017 questioning the maintainability of the present petition. It is submitted that as on the date of filing of the present petition the petitioners did not hold even a single share and therefore have no locus to file the present petition. This is based on certain facts that have come to their knowledge during the pendency of the case.

4. As per averment, made in the present application, the respondents received a request on 03.07.2017 for transfer of the shares originally held by the petitioner no. 1. These were alleged to be purchased by one Mr. Devinderjeet Singh for valuable consideration. The application for transfer of the shares was duly accompanied by the Transfer Deed and

the original share certificates. Under such circumstances the respondents effected the transfer and entered the name of the transferee as a member in their Register of Members. Upon effecting the transfer, they have filed the present application questioning the petitioner's locus for agitating oppression and mismanagement and have impugned the maintainability of the petition under 241-242 of the Companies Act 2013. Due intimation was also effected in the record of the RoC vide MGT-1. The details of the transfer of the shares effected in favour of Mr. Devinderjeet Sethi, the transferor, is stated to be as under:

Shares Transferred by the Petitioner No.1 to the Transferee			
Date of transfer	Number of Shares	Distinctive Number(s)	Certificate No.
29.05.2014	1000	0001-1000	01
10.06.2014	500	1001-1500	17
14.09.2015	500	1501-2000	18
14.09.2015	200	3301-3500	19
29.05.2014	100	3501-3600	20
29.05.2014	100	3601-3700	21
29.05.2014	100	3701-3800	22

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5. The petitioners were granted opportunity to respond to the allegations made in the said petition. While it is not denied that a Transfer Deed was duly executed in favour of Sh. Devinderjeet Singh, the transferee herein, and that the original certificates were also handed over to him at the time of execution of the transfer deed, it is submitted that the same has been misused by the alleged transferee in collusion with the Respondents. It is their case that the said transfer deed and certificates were only handed over by way of security to be held in Trust in a transaction between petitioner no.2 and one Mr. Piyush Aggarwal, a Director of Respondent No.4 Company.

6. Ld. counsel for the respondent/applicant submits that the respondent company is not concerned with the transaction between the petitioner and the third party. As far as they are concerned the respondent was bound to effect the transfer on receipt of valid documents. Pursuant to the Board decision, the transfer was effected and the name of transferee was duly entered in their register of members. The Register of Members was produced in Court to fortify this action.

7. The arguments advanced by the Ld. counsel for the petitioner are further sought to be demolished by the respondents by producing and relying on the Annual Returns of the petitioner no.1 company. The holding of equity in the respondent company had been reflected as 2,500 in the Annual Returns of Petitioner No.1 for the financial year 2014.

Transfers of 1300, 700 & 500 shares were reflected during 2014-2015. The applicants were able to show that the transfer was made for valuable consideration as the Bank Account of Petitioner No.1 reflected the credit transfer of Rs. 13,000, Rs. 7,000 & Rs. 5,000/-, being the face value of the shares in question.

8. The petitioners have no explanation to offer in respect of their own Annual Returns. They were even given opportunity to produce their Register of Investments to corroborate their holding 2500 shares in the Respondent Company as alleged, but were unable to do so.

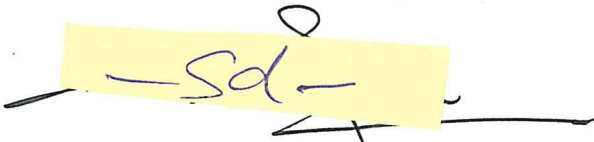
9. Under such circumstances, when the petitioners had transferred their entire holding in the Respondent Company in the year 2014 & 2015, they were clearly not members of the respondent company in 2016 when the petition was filed. This fact has been suppressed from the Court and vitiates the entire proceedings. The petitioners do not deny the transfer of their stake in favour of a third party, having executed the Transfer Deed and handing over the original certificates for valuable consideration. Their explanation or justification do not concern the respondents. Their suppression of this fact and consequent false averment of being members of the Respondent Company to the extent of 25% clearly amounts to a fraud being played on the Court.


10. It is well settled that litigation made on fraudulent acts and suppression of material facts should be nipped in the bud. Despite full knowledge that they had executed the Transfer Deed and handed over the original certificates, the petitioners have initiated the present proceedings. Their own Annual Returns reflect that their equity of 2500 shares in the Respondent No.1 Company was no longer held by them. Their explanation that these were handed over as security and entrusted to Mr. Devinderjeet Singh who misused and appropriated the shares to himself may entitle them to invoke the jurisdiction of another forum if they are able to substantiate their allegations, but these are facts with which the respondent company is not concerned with. Having received the request for transfer and in full compliance and requirements of the statutory provisions, they were duty bound to effect the shares in favour of the Transferee and enter his name in the Register of Members.

Indisputably, petitioner no.1 not being a member of the Respondent Company as on date of filing of the petition having divested itself of its equity by executing a valid transfer in the favour of transferee, disentitles them to initiate proceedings under Section 241-242 of the Companies Act.

When the threshold of eligibility to file a petition under Section 241-242 of the Companies Act 2013 cannot be surmounted, it would be an exercise in futility to adjudicate on merits.

Petition is therefore dismissed on grounds of maintainability. No order as to costs.


(S.K. Mohapatra)
Member (T)


(Ina Malhotra)
Member (J)