

In the National Company Law Tribunal
Mumbai Bench.

CP No.242/241/NCLT/MB/MAH/2017

Under Section 241(1) OF COMPANIES ACT 2013

In the matter of

Mr. Pramod Dagdu More & Anr. : Petitioners

V/s

Mr. Shekhar Jagganath Sonawane : Respondent

Order delivered on:16.11.2017

Coram: 1. Hon'ble Shri M.K. Shrawat, Member (Judicial)
2. Hon'ble Shri Bhaskara Pantula Mohan (Judicial).

For the Petitioners : Mr. Manoj Harit, Advocate.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. This Petition is filed on 19.06.2017 by invoking the jurisdiction under section 241(1) of the Companies Act, 2013 and the reliefs sought are reproduced below:-

- a. *The Respondent may please be restrained from preventing the Applicants from visiting the factory premises of the Company located at Malegaon;*
- b. *This Hon'ble Tribunal may be pleased to direct the Respondent to forthwith handover the keys to the factory premises of the Company to the Applicants and thereafter be prevented from interfering with either the business or possession of the factory premises of the Company;*
- c. *This Hon'ble Tribunal is requested to put the Respondent to appropriate cost for the loss and damages caused to the Company due to his illegal acts;*
- d. *This Hon'ble Tribunal is kindly requested to grant any other relief which has not been considered by the Applicants in the interest of equity, justice and good conscience. Cost may also be awarded."*

2. Facts in brief are that Om Printing and Flexible Packaging Pvt. Ltd. having its unit at Malegaon, District Nasik and Head Office at Vashi in Navi Mumbai was incorporated to carry on manufacturing activity of Printing and Packaging materials. The details of the shareholding as per the Petition were as under as on 25th October, 2016:-

<i>Sr. Nos.</i>	<i>Name of Shareholders</i>	<i>No of Shares</i>	<i>In %</i>
1.	<i>Pramod D. More</i>	<i>61390</i>	<i>16.16</i>
2.	<i>Akash P. More</i>	<i>62850</i>	<i>16.54</i>
3.	<i>Roshan P. More</i>	<i>106615</i>	<i>28.06</i>
4.	<i>Varsha P. More</i>	<i>67100</i>	<i>17.66</i>
5.	<i>Priyanka R. More</i>	<i>1000</i>	<i>0.26</i>
6.	<i>Shekhar Sonawne</i>	<i>12950</i>	<i>3.41</i>
7.	<i>Rajendra kumar N Lodha</i>	<i>18875</i>	<i>4.97</i>
8.	<i>Santosh kumar N Lodha</i>	<i>18820</i>	<i>4.95</i>
9.	<i>Tanaya Devidas Giri Goswami</i>	<i>150</i>	<i>0.04</i>
10.	<i>Sarla Rajendra kumar Lodha</i>	<i>12750</i>	<i>3.36</i>
11.	<i>Sidhhant R. Lodha</i>	<i>6250</i>	<i>1.64</i>
12.	<i>Sidhharth S. Lodha</i>	<i>3000</i>	<i>0.79</i>
13.	<i>Sunita Santosh Lodha</i>	<i>5250</i>	<i>1.38</i>
14.	<i>Snehil Rajendra Lodha</i>	<i>3000</i>	<i>0.79</i>

3. Petitioner Mr. Pramod D. More was holding 16.16%, his son Mr. Akash P. More was holding 16.54% and Petitioner No.2 Mr. Roshan P. More was holding 28.06%. It has also been clarified that two of the shareholders viz. Varsha P. More and Priyanka R. More were having respectively 17.66% and 0.26% shareholding. The Petitioner has claimed that the total shareholding of the family was thus 78.67%. The Respondents and Lodha family were entrusted to look after the Plant and manufacturing activity. One of the allegation is that the Respondents and Lodha family have mismanaged the affairs and wilfully neglected the business activity. The Applicant requested the Respondent to make payment of salaries etc. but instead of making the payment to security guards on 3rd March 2013 along with his son forcibly removed the security guards from the factory premises. The workers informed the Petitioner that the Respondents have also removed them from the service with effect from 3rd March 2017. On raising the question, the

Respondent Mr. Sekhar Jagganath Sonawane threatened the Petitioner. He had threatened that neither the Petitioner nor the Directors along with Lodha family would be allowed to enter the factory premises. The Petitioner had sent one of his Representatives to inspect the factory premises, however, on reaching the factory it was found that the Respondent had appointed a person as Watchman who had not allowed and even the locks have been changed. To repay the Bank dues the Petitioner wanted to enter into MOU with V.M. Group. However, the Respondent had not allowed any of them to visit the factory, leave alone to start the manufacturing. Due to the behaviour of the Respondent, Company suffered losses and even unable to repay Bank loan which was approximately ₹12 crores. The talks with the potential investors who were willing to buy the entire Company, so that the Bank dues could be cleared, have withdrawn their proposal. All requests have declined by the Respondent. Due to this reason, the Petition under consideration was moved and an Interim relief was also sought to allow the Petitioner to have access to the factory premises and the Respondent be restrained from putting impediments in the inspection or restoration of production.

4. As per the notings on the Order Sheets made in the past on several occasions it is evident that the Respondent had not cooperated/participated and remained absent. A hearing took place on 8th August 2017 and Interim order was passed, relevant portion extracted below for ready reference : -

- "4. On hearing and considering the facts and circumstances of the case, it is noticed that main relief and Interim relief are Interconnected with each other.
5. However, considering the amount of debt and the proceedings before DRT an Interim Order can be granted so that the Petitioner can inspect the premises along with proposed buyer during the day time in the week between 14.08.2017 to 19.08.2017.
6. The Respondent shall give free access to the premises to the Petitioner. The Petitioner shall not take away any of the machinery or deal with the machinery stock.
7. This Interim Order, an interim arrangement, shall remain in operation till further orders.
8. If the Respondent takes Law and Order in his hand and then the Police help can also be demanded by the Petitioner.
9. The Petitioner shall place on record the Affidavit of service and communicate the next date of hearing to the Respondent.

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10. The matter is now listed for hearing on 11.09.2017, along with the Affidavit of Service and intimation of date."

5. Today the Petitioner has filed an Affidavit and informed that on 11.11.2017 the State Bank of India had scheduled the inspection for the purpose of valuation of the factory building etc.. Mr. P.D. More, Director and representing the More family remained present to assist the Bank Officers. On that day an Advocate Mr. Manoj Harit and one Accounts Officer of the Company Mr. Bharat Shetty had also accompanied. All of them reached at the factory premises at 2.00 p.m. A guard was present who was requested to call the Respondent with the keys so that the SBI Officers could inspect the factory premises. However, on the instructions of Mr. Sonawane, no entry was allowed. It was informed that the Respondent would be available on 14.11.2017. Again on 14.11.2017 went to the factory with SBI Officers. The Respondent with his son arrived and shouted. They have beaten Mr. Bharat Shetty, Accountant. The father and son gave brutal, violent blows causing severe bleeding. Matter was reported to the Police Station to lodge FIR. The Respondent also reached in the Police Station and made counter-allegations. He called some prominent people who have persuaded the Police authorities not to file the complaint. The Petitioner was also asked to settle the matter amicably.

6. In the light of the above Affidavit it is vehemently pleaded that the Respondent has no fear of law and disobeyed the directions of the Hon'ble NCLT Bench. Learned Counsel has pleaded that vide order of 8th August 2017 the Petitioner was granted permission to have free access to the premises but the said direction was disobeyed and taken the law in hand by the Respondent. It is therefore, urged that the Petition be admitted and directions be given by imposing an exemplary cost.

7. On due consideration of the facts as narrated hereinabove, and after considering the totality and circumstances of the case, especially when the Respondent had failed to attend the proceedings although number of opportunities were granted and that there is nothing on record to rebut the allegations levelled by the Petitioner against the Respondents, I deem fit to allow the Petition with the following direction:-

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- a) That the Petitioner shall take the possession of the factory premises situated at Malegaon within 7 (seven) days on receipt of this Order. The Petitioner shall take help of the Police authorities; however, if need be, the requisite amount through challan shall be paid if required under Police Rules for providing Police protection to the Police station having territorial jurisdiction over the factory premises.
- b) The Respondent is hereby directed to surrender the keys of the gate of the factory premises so that the Petitioner and the Bank officers can have free access in the factory premises. In case of disobedience the Police authorities shall take necessary action against the Respondent and recover the keys of the factory premises or break-open the lock in the presence of witnesses.
- c) The Bank authorities shall take appropriate recourse to recover the outstanding dues and for that, if deem fit, can get the valuation done of the factory property along with Plant and Machinery.
- d) Henceforth the Respondent Mr. Shekhar Jagganath Sonawane shall not interfere or attend any of the business activities of the Company, i.e. "Om Printing & Flexible Packaging Private Limited".
- e) This is a fit case to impose a cost of litigation on the Respondent. Considering the unruly behaviour and disobedience of the order, a cost of ₹2 lakhs is imposed to be paid by the Respondent to the Petitioner without delay on receipt of this order.
8. The Petition is allowed. Disposed of accordingly and to be consigned to Records.

Date : 16.11.2017.
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Sd/-

M.K. SHRAWAT
Member (Judicial)