

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

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C.P.No 143/2010

Present: 1. Hon'ble Member (J) Shri Vijai Pratap Singh
2. Hon'ble Member (T) Shri S. Vijayaraghavan

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 19th April, 2017, 10.30 A.M

Name of the Company		Vinay Kumar Madhogaria & Ors. -Versus- NIF Ispat Ltd & Ors.	
Under Section		397/398	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. *Susabhi Banerjee*, Advocate } for the petitioners
2. *Manali Bose Aie*, Advocate }

[Signature]
Adv
19/4/2017

1. *Mr. Abhijit Mitra*, Adv }
2. *Mr. Raghav Kojan*, Adv } for the respondent
3. *Mr. Sukam Choudhury*, Adv }
MS-1405

[Signature]
19/4/17

Order attached

C.P. No.143/2010

Vinay Kumar Madhogaria & Ors. -Vs- NIF Ispat Limited & Ors.

ORDER

Ld. Counsel for the parties is present. In this case, the Hon'ble High Court has passed an order dated 16.12.2011 wherein the Hon'ble High Court has expressed its opinion "that the Company Law Board should not be fettered with any directions made by the High Court. It will be open to it to decide with reasons the maintainability issue in whatever way it thinks fit and proper. But maintainability has to be gone into first before going into the further issues. If while deciding the maintainability issue, the Company Law Board is of the view that the merits also have to be gone into, it will do so but after giving a ruling to that effect, so as to enable any aggrieved party to challenge the ruling. But the Company Law Board need only consider whether consideration of any issue on merits interferes with the jurisdiction of the High Court. It does not matter if some issues overlap because an issue, which is finally decided first between the parties in any forum, becomes binding on the parties. Thereafter, if the Company Law Board feels that it should decide finally the company petition, it might go ahead and do so."

It also appears from the record that on 20.04.2011, the Hon'ble High Court has passed an injunction order and its validity was further extended by its order dated 16.12.2011.

This petition has been filed under section 397 and 398 of the Companies Act, 1956 on the ground of oppression and

mismanagement. The case of the petitioner is that the respondent no.1 company was incorporated on 22.11.1995 and this case relates to the company of Madhogaria's family, which has several properties in the name of family members. In view of the settlement amongst the family members, they entered into a family arrangement dividing their family companies including R-1 Company among them as NIF group and NSI group providing NIF group to the petitioner no.1 and respondent no.2. As the family arrangement entered among the family members was further modified by a Memorandum of Understanding on 31.05.2017, the petitioner no.1 and respondent no.2 got the NIF group and other group i.e. of the respondent no.6 and other brother Vinay Madhogaria filed Company Petition against each other wherein the then Company Law Board passed final order on 23.12.2008. Since the petitioner no.1 and the respondent no.2 was not satisfied with the order passed by the then Company Law Board, the respective parties filed two 10 F appeals before the Hon'ble High Court at Calcutta which has been numbered as ACO No.19/2009 and 20/2009 assailing it non-consent order and interpretation given by the then Company Law Board as erroneous and not in accordance with law.

The petitioner's allegations in this petition are that the respondent nos.2 and 3 without even putting it to notice of petitioner no.1 removed the petitioner no.1's joint cheque signing authority. Though the petitioners are entitled to 50% in the NIF group companies as per the Memorandum of Understanding entered by and among the family members. Apart from this, the petitioners have further alleged that the respondent nos. 2 and 3 have been siphoning off the funds of the company and investing the same in a parallel business individually run

by respondent nos. 2 and 3 which is prejudicial to the interest of the Company as well as to the petitioners.

The petitioners himself have filed the order of the then Company Law Board passed in C.P. No.03/2008. On perusal of the order, it appears that on the basis of family settlement between NIF group and NIS group, and then Company Law Board has passed the order whereby specific directions were given to both the groups. The order of the then Company Law Board dated 23rd September, 2008 was challenged by the petition no.2 himself, but during pendency of this Appeal, the petitioner filed an application before the Hon'ble High Court for transposing himself as Respondent and by the order of the Hon'ble High Court he got himself transposed as respondent.

It is pertinent to mention that petitioners right is mainly based on the family settlement dated 14.06.2006 and thereafter Memorandum of Understanding agreed between the parties. The said family settlement is itself *sub-judice* before the Hon'ble High Court in appeal. A detailed order on the basis of family settlement was passed in C.P. no.03/2008 by the Company Law Board on 23.12.2008. This petition cannot be decided without taking any reference of the then family settlement. Keeping in view of the above circumstances, we have passed an order dated 30.03.2017 that the petition alleging oppression and mismanagement against NIF Ispat Ltd. cannot be decided without taking into consideration of the family settlement, which is the very basis of the impugned order of the then Company Law Board dated 23.12.2008, against which 10F appeal is pending before the Hon'ble High Court at Calcutta. So, in the circumstances mentioned above it is difficult to decide this company petition without relying on the family settlement which itself is subjudice and going into the merit of family

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settlement will amount to interference in the order of Hon'ble High Court. Therefore we have taken the view that no order can be passed unless and until 10F appeal is decided by the Hon'ble High Court wherein family settlement is itself disputed.

On previous hearing, the Id. Counsel for the respondent has informed that he will mention the matter before the Hon'ble High Court for fixing the early date for hearing of appeal and the Id. Counsel for the petitioner had assured that she will fully cooperate with the respondents for early disposal of appeal. Id. Counsel for the respondent informed that he gave notice to the petitioner that he will be mentioning the matter before the Hon'ble High Court on 3rd April, 2017 and even after that notice on 03.04.2017, the petitioner was not present in the Court. The respondent has filed the copy of both the notices in the Court.

The learned counsel for the petitioners made a request that she be permitted to file an application for recalling order DT.30TH March 2017. There is no need of seeking prior permission for moving an application so question of granting leave to move an application does not arise.

List on dated 19th May, 2017 for FO.

Sd/-
(S. Vijayaraghavan)
Member (T)

Sd/-
(Vijai Pratap Singh)
Member(J)