

9

BENCH-I

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P.No.119/KB/2017
IA. No.324/KB/2017
IA.No.328/KB/2017
IA.No.111/KB/2017

**Present: Hon'ble Member (J) Shri Vijai Pratap Singh
Hon'ble Member (J) Shri Jinan K.R**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 20th September 2017, 10.30 A.M

| Name of the Company | | Amit Kumar Gupta. -Vs- LGW Limited & Ors. | | |
|---------------------|--|---|------------------------|---------------------|
| Under Section | | 241/242 | | |
| Sl. No. | Name & Designation of Authorized Representative (IN CAPITAL LETTERS) | | Appearing on behalf of | Signature with date |

1. CS DEEPAK KUMAR KHAITAN, F.C.S, R1 & R2
PRACTISING COMPANY SECRETARY Deepti
20/09/2017
2. CS Siddhi Dhandharie, ACS
Practicing Company Secretary Respondent
No. 3
Siddhi
20/09/17
3. Mr. Abhishek Gille, Sr. Adv
Mr. D.N. Seame, Adv
Mr. T. Keraliyan, Adv. Petitioner
T. Keraliyan
20/09/17
4. Jinesh Shah
(Respondent No. 5 in the matter) J. Shah
20/09/17

4

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

IA No.328/KB/2017
CP No.119/KB/2017

ORDER

Jinan K.R., Member (J)

This is a petition filed in the CP No.119/2017 filed under Sec.241 and 242 of the Companies Act, 2013 praying for interim injunction as well as mandatory injunction as against the respondents No.1 to 4 alleging that remuneration payable to the petitioner as a Director by the respondent No.1 company has been withheld by the respondents without assigning any valid reasons.

2. The respondents entered appearance and filed reply on affidavit admitting withholding of salary due to the petitioner on the reason that the petitioner who is holding two vehicles of the company valued at Rs.26 lakh in total is liable to pay the value of the car to the company and since he failed to pay the value of the car due to the company, the respondents are withholding the amount.

3. Upon hearing the arguments and perusal of the records, *prima facie*, it has come out in evidence that the salary payable to the petitioner for the financial year 2015 till 30/9/2016 comes to Rs.9,69,232/- and according to the respondents the applicant is liable to pay the said amount to the respondents and therefore, the respondents are withholding the same. According to the respondent the petitioner failed to discharge his liability owed to the first respondent company.

4. According to the Ld. Counsel for the respondents, the company has got a lien over the arrears of salary amount payable to the petitioner unless and until the petitioner discharge his liability. Annexure E to the application shows that the respondent deducted TDS out of the arrears of salary withheld by the respondents.

5. Ld. Counsel for the respondent was unable to convince us that respondent can withhold the arrears of salary without quantifying petitioner's liability. So also, no valid reason submitted to show that without paying salary why the respondents deducted the TDS. Deduction of TDS by the respondents indicates that the portion of the salary on which TDS has been deducted has been paid to the petitioner and petitioner is liable to account the amount as his earnings for the said financial year. That being so the balance of convenience *prima facie* favours in favour of the petitioner. Unless and until the alleged liability of the petitioner is quantified it is unfair and unjust to withhold the salary due to the petitioner who is a family member of the respondent's family.

6. Given the above said reasons the IA No.328/KB/2017 is liable to be allowed in part directing the respondents No.1 to 4 to pay the admitted amount of salary of which TDS has been deducted, i.e. Rs.9,69,232/- within one week from the date of this order. It is made clear that the direction to pay the above said arrears of salary found due to the petitioner no way prejudice the respondents from initiating recovery of any dues allegedly due from the petitioner on account of withholding of car allegedly belongs to the respondent No.1 company.

7. In the result, the respondents No.1 to 4 at this moment directed to pay Rs.9,69,232/- within one week from the date of this order.

8. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance with all requisite formalities.

9. List the IA along with remains IAS for hearing on 13/11/2017

Sd/-
Vijai Pratap Singh,
Member (J)

Sd/-
Jinan K.R.,
Member (J)

Signed on 20th September 2017