

Single Bench

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP. NO.402/KB/2017

CORAM: Hon'ble Member (J) Ms. Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 16th August, 2017, 10.30 A.M

Name of the Company	Harsh vardhan Kajaria & Ors -Vs- Metro Infrastructure Development Ltd & Ors		
Under Section	241-242 (O & M)		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. Ratnamko Banerji, Sr. Adv.
 2. Nirmaleya Dasgupta, Adv.
 3. Shaunak Mittal, Adv.
 4. Debjani Chatterjee, Adv.
- for Debaty
16/8/17
Petitioner

16 08 2017 – C.P.No.402/KB/2017 – Harsh Vardhan Kajaria & Ors. Vs. Metro Infrastructure Development Ltd. & Ors.

Ld. Lawyers appeared on behalf of the petitioners.

They have filed their petition under Section 241-242 (O&M) with a prayer for interim relief. Order on interim relief is passed separately and kept in record.

The petitioner is directed to issue notice upon the respondents.

Fixed on 14.09.2017.

Sd/-
MANORAMA KUMARI
MEMBER(J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CP No. 402/KB/2017

In the matter of :

The Companies Act, 2013

And

In the matter of :

*Sections 241, 242 and 244 of the
Companies Act, 2013*

And

In the matter of :

Harsh Vardhan Kajaria & Ors - Petitioners

V/s.

*M/s.Metro Infrastructure Development
Ltd. & Ors.*

-Respondents

Judgment / Order delivered on : 16th Aug. 2013

CORAM : Ms. Manorama Kumari, Member(J)

For the Petitioner(s)

Mr. Ratnanko Banerji, Sr. Advocate
Mr. Nirmalya Dasgupta, Advocate
Mr. Shaunak Mitra, Advocate
Ms. Debjani Chatterjee, Advocate

For the Respondent(s)

No one appeared

Per : Ms.Manorama Kumari, Member(J) :

O R D E R

The Company Petition bearing CP No. 402/KB/2017 is filed by the Petitioners under Sections 241,242 and 244 of the Companies Act, 2013 with various prayers along with the prayer for interim relief which are as follows :

- (a) Scheme be framed for management and administration of the company;
- (b) The Respondent Nos. 2 to 5 be removed as Directors of the company and be restrained from holding themselves out or acting as directors of the company;
- (c) A further nominee of the petitioners and/or any other independent person be appointed as a Director of the company;
- (d) The respondents be directed to furnish to the petitioners all books, records and documents pertaining to the company;
- (e) Injunction restraining the respondent Nos. 2 to 5 from giving effect or taking steps on the basis of the prayers made in paragraph (d) above;
- (f) Injunction restraining the respondent Nos. 2 to 5 from involving themselves in the business of the company;

(g) Injunction restraining the respondents from holding or convening any meeting of the Board of Directors or any Annual General Meeting or any Extraordinary General Meeting of the company;

(h) Injunction restraining the respondents from altering and/or changing the shareholding patterns of the company in any manner whatsoever;

(i) Injunction restraining the respondents from altering and/or changing the composition of the Board of Directors of the company in any manner whatsoever except for removal of the respondent Nos. 2 to 5 as directors and/or appointment of petitioners' nominee and/or an independent person as Director;

(j) Injunction restraining the respondent Nos. 2 to 56 from conducting the affairs of the company or intermeddling with the affairs of the company or from operating the bank account of the company in any form or manner whatsoever and/or without the signature of the petitioner No.1;

(k) Injunction restraining the respondents from dealing with or encumbering or creating any charge in respect of the property of the Company;

(l) An order of injunction restraining the respondents from operating any of the bank accounts of the company etc.

The Id. Lawyer of the petitioner submitted that he is moving the petition after serving the notice to the respondents vide affidavit of service filed with the petition, as the matter is urgent, in view of the fact, that after filing of the Company Petition, the petitioners came to know on perusing the portal of the Ministry of Corporate Affairs, that the Respondents had acted in a manner

prejudicial to the interest of the Company i.e. (i) by way of appointing five new Directors of the Company on 26-06-2017 without any notice to the petitioner as reflected from Form No. DIRE 12 filed by the Respondent No.5 with digital signature, against the established procedure of law.(Page No. 19 to 26 are Form No. DIR 12 of the Supplementary affidavit); (ii) by making several changes in shareholding pattern that has been purportedly reflected in the alleged returns of 2016-2017(page No. 82 to 92 of the Supplementary affidavit) which reflects purported transfer of shares by the petitioner No.4 in the name of Ethics Commercial Ltd., which has never been transferred or consented to transfer by the petitioner No.4; (iii) by indulging in rampant misuse of funds of the Company by the Respondents and siphoning off of funds of the company, though the petitioner No.1 being one of the signatories to the Company's existing bank accounts maintained with HDFC Bank, Dalhousie Branch as reflected from the statement of account.

The Respondents have acted in collusion and conspiracy with each other and continue to operate the account without the knowledge of the petitioners being one of the signatories as well as Directors apart from being the holder 39.65% of the shares of and in the Company together.

Heard the petitioner at length and seen the documents annexed therein. I found that there is prima facie case in favour of the petitioner and if interim protection is not granted at this stage then it will cause irreparable loss to the petitioner apart from multiplicity of litigation.

Under such circumstances, I am inclined to grant status quo in respect of shareholding pattern of and in the Company and also with regard to the composition of the Board of the Company.

Further, the Respondent(s) are also restrained from withdrawing money from the Bank account of the Respondent No.1, company, in which the petitioner No.1 is also one of the signatories.

Date as before .

Sd/-

Manorama Kumari
Member(J)