

In the National Company Law Tribunal
Mumbai Bench.

MA No. 616 in CP No.714/241-242/NCLT/MB/MAH/2017

Under Section 241-242 of Companies Act, 2013

In the matter of

Mr. James Martin Pereira : Petitioner

V/s

M/s. Promas Research Laboratories Pvt. Ltd. & Ors. : Respondent

Order delivered on: 30.11.2017

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

Present:

For the Petitioner and : 1. Ms. Nirupama Kar, Sr. Adv./Adv.
For the Respondent : 2. H.P. Kar,
3. Jay Lathigara, I/b. Interjuris.

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

Interim ORDER

1. A Petition has been filed on 23rd November 2017 by invoking the provisions of section 241-242 of the Companies Act 2013. Since the Petition has been recently served upon the Respondent, therefore, Reply has not been filed so far. In the interregnum the Petitioner has moved the impugned Application on 27th November 2017 seeking injunction as follows (only followings are demanded):-

"a) to direct the Respondent No. 1 Company to maintain the status quo with respect to the shareholding of Respondent No. 1 Company as per the Annual Return filed on 31.03.2016;

b) to direct the Respondent No. 1 Company to maintain the status quo with respect to the Directorship of Respondent No. 1 31.03.2016;

c) to direct the Respondent No. 5 i.e. Registrar of Companies, Mumbai not to take on record any of the documents pertaining to change in shareholding of Respondent No. 1 Company;

d) -----

e) -----

f) *to direct Respondent no. 1 company to give inspection of all statutory records, minutes book, bank statements of Respondents no. 1 and bank statements of respondent no.2;*

g) *to restrain the Respondent No. 1 to 4 from creating any third party rights of the properties belonging to the Respondent No. 1 Company and also restrain the merger/amalgamation of the Respondent No. 1 Company with any other Company;*

2. Both the sides heard. On due consideration of the facts of the case as narrated in the Petition the Interim Injunction is granted as per the following directions:-

- i. Apropos to Prayer (a) it is hereby directed that 32.50% shareholding of Petitioner No.1 Mr. James Martin Pereira (holding 6,500 shares) in Respondent No.1 Company M/s. Promas Research Laboratories Pvt. Ltd. shall not be diluted or to be transferred by the Respondents or their Representative till further orders.
- ii. Apropos to Prayer (b) *supra*, it has been brought to our notice that the admitted factual position is that the Petitioner is a senior citizen presently aged about 71 years as admitted vide 5.1 of the Petition. In terms of section 196(3) of the Companies Act, 2013 no Company shall continue the employment of any person as Managing Director or whole-time Director who has attained the age of 70 years. Although the Petitioner is above the age prescribed but admittedly as per the records of the Company not removed or ceased to be a Director. An exception is that the appointment of a senior citizen who has attained the age of 70 years can be approved by passing a special Resolution on service of notice through a motion explaining the justification of appointment of such person. Following the conditions laid down under section 196 Sub-section 3 the Petitioner can seek a motion for special Resolution to be convened by the Respondent No.1 Company by issuing notice as per law.

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- iii. Apropos to prayer (c) *supra*, the Registrar of Companies; who is made a Respondent in the pleadings as Respondent No.5; shall not take on record any document pertaining to change in shareholding of Respondent No.1 Company without obtaining prior approval of this Bench.
 - iv. Apropos to prayer (f) the Respondent Company is directed to provide a soft-copy (either in compact disc or pen drive) of the Accounts for the financial years ended on 31st March 2013 to 31st March 2017 to the Petitioner/Legal Representative.
 - v. Apropos to prayer (g) a statement has been made by the Learned Representative of Respondent Company that there is no immovable property belonging to the Company. Only Plant & Machinery are the Assets of the Company. It is directed not to create any third party right on such Assets of the Company as reflected in the Balance Sheet drawn as on 31st March 2017.
3. Vide this Interim Order, the Miscellaneous Application under consideration is disposed of on the terms and conditions as held *supra*.
 4. Since the Petition has already been served upon the Respondent, therefore, reply to be filed on or before 30th December 2017; to be served upon the Other Side. Thereafter, if deem fit, the Petitioner can file a Rejoinder by 15th January 2018, naturally to be circulated. The Petition be listed for further hearing on **29th January, 2018.**

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

Date : 30.11.2017

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Sd/-

M.K. SHRAWAT
Member (Judicial)