

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
SPECIAL BENCH

C.P. No. 110(ND)/2009

IN THE MATTER OF:

Abinash Chander Mahajan & Ors. Applicants/petitioners

Vs.

Vikas Promoters Pvt. Ltd. & Ors. Respondents

under Section 397-398

Order delivered on 13.10.2017

Coram:

CHIEF JUSTICE (Retd.) M.M. KUMAR
Hon'ble President

S.K. MOHAPATRA
Hon'ble Member (T)

For the Applicant/petitioner: Mr. Sunil Fernandes, Mr. Siddharth & Ms. Charu Tyagi, Advocates

For the Respondent: Ms. Prachi Johri, Advocate

ORDER

C.A. No. 369(PB)/2017

Notice of the application was issued.

Ms. Prachi Johri, learned counsel for the non applicant/petitioner has accepted notice. She states that no reply would be necessary.

This is an application filed by the respondent with a prayer for passing appropriate direction holding that the applicant-respondents have substantially complied with the directions contained in para 18.1 of the order dated 22.03.2017 passed by this Bench in the light of the fact that the applicant-respondents have deposited a sum of Rs. 3.5 crores for the purposes of paying the bank loan.

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This Bench has decided C.P. No. 110(ND)/2009 on 22.03.2017 and detailed directions were issued in para 18 of the order. One of ~~the direction was in para 18.1 which reads as under:~~

~~“Respondent No. 2 to 5 are directed to deposit Rupees 50,00,000/- (Rupees fifty lakhs only) with the registry of this Tribunal within one month from the date of receipt of this order which shall remain subject to further order of this Tribunal.~~

In accordance with the aforesaid directions the applicant-respondents were directed to deposit a sum of Rs. 50,00,000/- (Rupees fifty lakhs only) with the registry of this Tribunal within one month from the date of receipt of the order which to remain subject to further order of the Tribunal. The applicant-respondents filed an Appeal against order dated 22.03.2017 being Company Appeal (AT) No. 131/2017. In the meanwhile, the applicant-respondents also filed an application before this Bench and the same was dismissed by a detailed order on 04.08.2017. In the concluding para we have reiterated direction issued in para 18.1 requiring the applicant-respondents to deposit a sum of Rs. 50,00,000/- (Rupees fifty lakhs only) and also the factum that on account of the pendency of the appeal before the Hon'ble Appellate Tribunal the directions were not complied with. Again, we directed the applicant-respondents to first comply with the direction given in para 18.1 and deposit a sum of Rs. 50,00,000/- (Rupees fifty lakhs only) on or before 21.08.2017. It is appropriate to mention that the applicant-respondents have deposited a sum of Rs. 3.5 crores in the account of respondent company on 28.06.2017. The order dated 04.08.2017 was also challenged in appeals by filing Company Appeal (AT) Nos. 299-

300/2017. The Hon'ble Appellate Tribunal vide order dated 12.09.2017 have dismissed both the appeals and the aforesaid order reads as under:-

“One of the impugned order was pronounced by the Tribunal in open Court on 22nd March, 2017. A petition for condonation of delay has been filed in respect of such order. However, as we are not satisfied with the ground shown by the appellant, learned Counsel for the appellant submits that the appellant will not press the appeal against the order dated 22nd March, 2017 passed in Company Petition No.1 10(ND)2009. It is accordingly dismissed as not pressed and being barred by limitation.

In so far as the other impugned order dated 4th August, 2017 is concerned, Learned Counsel for the appellants submitted that the Tribunal was requested to modify the order dated 22nd March, 2017 on the ground that the appellants have subsequently deposited amount of Rs. 3.5 crores. However, as the impugned order dated 22nd March, 2017 has reached finality, we are not inclined to interfere with the order dated 4th August, 2017.

However, this order will not come in the way of the appellant to bring to the notice of the Tribunal that they have deposited a sum of Rs. 3.5 crores, but that does not mean that we have allowed the appellant to adjust the sum of Rs. 50 lakhs against the said amount.



Both the appeals are dismissed with aforesaid observations.”

A perusal of the last para of the order would show that the order passed by the Hon'ble Appellate Tribunal was not to come in the way of the applicant-respondents to bring to our notice the factum of deposit of a sum of Rs. 3.5 crores. It was clarified that it would not mean that the Hon'ble Appellate Tribunal have allowed the applicant-respondents to adjust a sum of Rs. 50,00,000/- (Rupees fifty lakhs only) against the said amount and the appeal were dismissed.

It is surprising that the applicant-respondents are back with this application with a prayer that since they have deposited a sum of Rs. 3.5 crores and direction contained in para 18.1 of the order dated 22.03.2017 are deemed to be complied with. This is specifically stipulated in the order of the Hon'ble Appellate Tribunal that the amount of Rs. 50,00,000/- (Rupees fifty lakhs only) is not to be adjusted merely by deposit of a sum of Rs. 3.5 crores. Therefore, we find that this is complete misuse of the process of the Court by the applicant-respondents and violation of the direction issued in the order dated 04.08.2017 granting time to deposit an amount of Rs. 50,00,000/- (Rupees fifty lakhs only) on or before 21.08.2017.

As a sequel to the above discussion, the application fails and the same is dismissed with cost of Rs. 25,000/-.

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In order to expedite the appointment of valuer the matter shall come up on 27.10.2017.

A copy of the affidavit suggesting the name by the petitioner has been handed over to the learned counsel of the applicant-respondents and the same shall also be filed in the registry by Monday i.e. 16.10.2017.

Any other counter affidavit be filed by the applicant-respondents with a copy in advance to the learned counsel for the petitioner.

Court on its own motion

Let notice to show cause be issued to the applicant-respondents as to why proceeding under the Contempt of Courts Act, 1971 be not initiated for violating the order dated 04.08.2017 and are avoiding to deposit a sum of Rs. 50,00,000/- (Rupees fifty lakhs only) as per the direction issued in the order dated 22.03.2017 and further direction issued in the order dated 04.08.2017. If the amount is deposited as submitted by Mr. Fernandes learned counsel before the date of hearing in the registry then the personal presence of the contemnors/applicant-respondents shall remain dispensed with.

Notice of contempt be served on the applicant-respondents returnable on 17.11.2017.

Mr. Fernandes, learned counsel shall also apprise the applicant-respondents about the notice of contempt which have been issued today.

A copy of the order be given to Mr. Fernandes, learned counsel for the applicant-respondents.

—Sd—

(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

—Sd—

(S.K. MOHAPATRA)
MEMBER(TECHNICAL)