

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

CP 369/ND/2017

CORAM:

**PRESENT: SH. S. K. MOHAPATRA
HON'BLE MEMBER(T)**

**SMT. INA MALHOTRA,
HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.11.2017**

**NAME OF THE COMPANY: M/s Meidensha Corporation Vs. M/s Prime
Meiden Ltd. & Ors**

SECTION OF THE COMPANIES ACT: 241-242

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	For the Petitioner:	Mr. P.V. Kapur, Sr. Advocate with Mr. Nishant Menon, Mr. Inder Raj Gill, Ms. Anuradha, Sharma, Mr. Avichal Perasad, Advocates		
	For the Respondent:	Mr. Jaideep Gupta, Sr. Advocate with Mr. Nishant Bhardwaj and Rohin Dubey for Respondents No.2 to 7. Mr. Siddharth Yadav with Mr. Ramanjit Singh for Respondents No.11 & 12. Mr. Anurag Dayal and Mr. Lakshya Khanna, Advocates for R 13 to 18.		

ORDER

4 PM

An Application, CA No. 327 of 2017, has come up for consideration before this Bench seeking urgent relief. As per averments, it is submitted that certain immediate disbursement of payments have to be made for a proper functioning of the business of the Respondent company. This Bench has been persuaded to believe that failure to make payments towards statutory dues, customs duties as well as payments to third parties shall cause irreparable loss to the company's business and reputation. Further, stalling of the delivery of

the equipment to their major customer Maruti Suzuki has to be completed latest by tomorrow that is, the 24th of November, 2017. It is submitted that failure to adhere to the time schedule shall invite liquidated damages as well as result in the company being black listed by the Suzuki Group of Companies worldwide. Further, the ESIC payments for the month of October, 2017 is overdue which could result in fines as well as imprisonment. The company also has to make necessary payments towards GST and other vendors.

2. It would be pertinent to mention that the parties hereto have filed their respective petitions u/s 241-242 of the Companies Act. The Petitioners are admittedly 60% shareholders, have majority representation on the Board of Directors and have an agreement vide which they would ultimately acquire the entire shareholding of the company in a phased manner. Notwithstanding their majority on the Board, there are certain issues which, as per the amended Articles of Association are categorised as "Reserved Matters" and require the concurrence of both the Promoters (Respondents) as well as their Japanese counterparts (Petitioners). These also include the rights, duties and certain other obligations of the Executive Vice Chairman Mr. Rohan Mehta.

3. The urgent discharge of payments and other transactions are not disputed. The respondents are willing to sign and clear documents as required, provided these are done in the manner and format adhered to till now. Specific procedure had been adopted which involved multiple signatures including those of the Executive Vice Chairman (EVC).

4. The grievance of the Respondents is that pursuant to a Court convened Board Meeting on the 12th November 2017, a resolution was approved by Board of Directors, allegedly to simplify the existing procedure of signing documents by curtailing the number of signatures to three. While doing so, the petitioners, who were in majority on the Board have excluded the requirement of the Executive

Vice Chairman to countersign the documents, though a representative of the respondent has been retained as a signatory. While the Respondents have filed their application seeking a restrain on giving effect to those resolutions on grounds that they violate the very fabric of the Articles of Association, more specifically those in the "Reserved Matters" category, the Petitioners have argued that the said interpretation is misconstrued. It is submitted that the resolutions passed pertain only to the day-to-day working of the company.

5. We have heard the Ld. Senior Counsels for both parties at length. The matter is coming up for final disposal on the 1st December, 2017 wherein the question whether the resolutions violate any of the terms of the Reserved Categories in the Articles of Association shall be considered. It was for this reason that this Bench had declined to interfere with the decision of the Board or direct that the resolutions should not be given effect to.

6. Though more than one relief is being claimed in the present petition, we are limiting ourselves to the resolution authorising disbursement of payments and procurement and disbursal of material, the urgency of which has been shown to us. This is specifically in respect of Resolution No.7 amending the formats which are now required to be countersigned by 3/4 signatories instead of the requirement of being countersigned by 7 or more, and excluding the requirement of the Executive Vice Chairman to sign them. One of formats is required to be countersigned by Mr. Anil Sethi, DGM (Finance) while the other is to be signed Shri Krishan Kumar HOD Purchase on behalf of the Respondents. This has been justified on the ground that the earlier procedure which required signatures of multiple officers for implementing all decisions was inefficient and not in the interest of smooth functioning of the company. It is being pointed out that despite the said resolution passed by the Board of Directors, Mr. Anil Sethi has flagrantly refused to countersign, giving rise to a complete impasse with respect to urgent functioning of the

company. The petitioners have referred to some acrimonious mails circulated by the respondents, which they allege are causing a disharmonious atmosphere in the Company.

7. The resistance to give effect to the aforesaid resolution is on grounds of infringement of the rights of the Executive Vice Chairman which they allege cannot be done being a "Reserved Category" matter. It is viewed as a step for ousting him in taking major decisions and undermining his authority, thereby sidelining him to the position of a mere observer. While the grievance of the Respondents is understandable, the resolution passed by the Board of Directors on 12.11.2017 stands till it may be set aside. Keeping in view that disbursement of timely payment is in the best interest of the company, we direct that Mr. Anil Sethi and Mr. Krishan Kumar to countersign all documents / cheques for payments and procurements. It is specifically being noted that the Respondents are not objecting to making the payments. What is objected to is the decision to override the authority of the Executive Vice Chairman. Keeping in view that the business of the Respondent company should not suffer, we direct that resolution in respect of the working of the company be adhered to. This is an interim arrangement and shall remain in force till 1st December, 2017 when the petition and counter-petition shall be heard on merits. The aforesaid decision would be subject to the outcome of the main petition, wherein several factors are to be considered, viz., oppression and mismanagement, the rights of the parties under the Articles of Association and balancing equities in the light of the technicalities and mandatory provisions of the Companies Act, to name a few.

8. Resultantly, we direct that there should be proper adherence to the resolution passed by the Board in respect of disbursing payments and/or procuring material and despatching finished goods to their vendees, till the 1st of December, 2017, when final arguments shall be heard in both the Company Petitions. Should for any reason the



aforesaid named officials of the Respondent Company be unavailable, the Chairman/ Executive Vice Chairman shall nominate any other official to represent them in signing cheques/ documents. It is also being made abundantly clear that should the Respondent's employees/nominee fail to cooperate in countersigning the required documents, it shall be viewed as a deliberate attempt by the Respondents to thwart the working of the company.

9. As the application has been taken up only to consider the urgent requirement of payments and procurements, the Respondents may file their reply to the same. Be listed along with the main CP for disposal.

10. Copy of the order be given to both the parties.

Sd/-

(S. K. Mohapatra)
Member (T)

Sd/-

(Ina Malhotra)
Member (J)