

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI

CP No.651/241-242/NCLT/MAH/2017

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No.651/241-242/NCLT/MAH/2017

of the Companies Act, 2013

In the matter of

Rajeev Kapoor & Ors. ... Petitioners

V/s

Baldev Alloys Pvt. Ltd. & Ors ... Respondents

Order delivered on 24.01.2018

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioners: Mr. Chirag Mody, Nausher Kohli, Samit Shukla i/b
DSK Legal

For the Respondent: Mr. Mustafa Doctor, Sr. Adv. a/w Ms. Priyanka
Desai and Mr. Parth Gokhale i/b Khaitan & Co.
for Resp. 1 to 4.
Mr. Akshay Petkar i/b Zonzarrao & Co.
for Respondent 5

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

1. The Petitioner has mentioned this Company Petition stating that the Respondents side without putting it to the Petitioner who has 22.82% shareholding in the company, sold away the only asset of the Company at under valuation causing prejudice to the economic interest of the Petitioners, when the Petitioner questioned the sale of the land, plant & machinery to the third party i.e. R5, Petitioner 1 was removed as director on 05.10.2017 despite there is a provision in the Articles of Association clause 28 providing equal representation to the Petitioners' group in the Board of R1 company. In view of the same, the Petitioners have sought 'status quo' over the asset of the Company as an ad-interim order pending disposal of this case.

2. The Petitioner's Counsel has shown Balance Sheet for the F.Y. 2015-2016 valuing the land, plant & machinery, etc. at ₹72,54,39,402 saying

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that property worth of ₹72.50 crores was sold for an amount of ₹40 crores, which is far less than the book value shown in the Books of the Company.

3. To which the Counsel appearing on behalf of R1-4 submits that the property was not sold at under-valuation, however, the Counsel has sought time for filing reply to this Company Petition. The Counsel appearing on behalf of R5 submits that property has not been purchased at under-valuation, indeed revenue authorities have impounded the sale deed on the ground it was not fully stamped, in view of the same, deficient stamp duty has also been paid as directed by the revenue authority. The Counsel of R5 has therefore, sought that since R5 has been carrying business on the same property, there shall not be any interim order over the asset purchased by R5.

4. On hearing the submissions of either side, it appears that the asset sold to R5 is the only asset of R1 Company having land, plant & machinery on the said land. Moreover, there is no specific denial from the Respondent Counsel to the allegation of the Petitioner that the Respondents have not served notice upon the Petitioners in respect to sale of this property. Since R5 has stated that it has already started carrying business over the property which was sold by R1 Company to R5, it could be ascertained that R1 company property was sold to R5 without any notice to the Petitioners.

5. Therefore, this Bench is of the view that the Petitioners herein have shown prima facie case falling under section 241-242 of the Companies Act, 2013, whereby the Respondents including R5 are hereby directed not to create any further third party rights over R1 property sold to R5 until further orders.

6. List this matter on 05.03.2018 for hearing with a direction to the Respondents to file reply within 15 days hereof, rejoinder, if any, 15 days thereof.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)