

In the National Company Law Tribunal
Mumbai Bench, Mumbai.

CP No. 758/59, 241-242/NCLT/MB/MAH/2017

Under Section 59, 241-242 of the Companies Act, 2013

In the matter of

Dhanesh Mehta &Ors. : Petitioner

V/s

Graham Firth Steel Products (India) Limited &Ors. : Respondent

Order delivered on : 13.12.2017

CORAM:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri BhaskaraPantula Mohan, Member (Judicial).

Represented by:

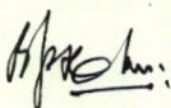
For the Petitioners : 1. Mr. Mustafa Doctor, Sr. Counsel;
2. Mr. SumitPatni, Counsel;
3. Mr. MihirMody, Advocate;
4. Ms. PranaliAdangale, Advocate.

For the Respondents : 1. Mr. Nisar Shah, Advocate for R-4;
2. Mr. PreetChheda, Advocate for R-4;
3. Mr. Sean Wassoodev, Advocate for R-1 to R-3;
4. Mr. RupeshMandhare, Advocate for R-1 to R-3.

Per BhaskaraPantula Mohan, Member (Judicial).

INTERIM ORDER

1. The present petition is filed by the Petitioners under provisions of section 59, 241 and 242 of the Companies Act, 2013, Inter-alia claiming among various reliefs particularly as an interim relief, to restrain the Respondents by an order of injunction, pending disposal of this Petition, from creating any third party interest in the shares of the Petitioners which have already been transferred in the name of Respondent No.2 and pending final hearing and disposal of the Petition, directing the Respondents shall not convene any general meeting and the extra-ordinary general meeting of Respondent No.1, without specific leave of this Tribunal and without sufficient notice to all the members and share holders of the Respondent No.1 and to direct the respondents jointly or severally to acknowledge and confirm the status of Petitioners and the members and shareholders of the Respondent Company with all attending rights and benefits including but not limited to right to receive notices for general meetings, right to vote on the shares held by the petitioners and further to pass an order of injunction restraining the Respondents and their servants, agents and assigns and any other person claiming through them or acting for and on their behalf from dealing with, disposing of,



negotiating, alienating, transferring, encumbering, create third party, title or interest in respect or parting with the possession and ownership of the said land situated at A-6, MIDC, Chikalthana, Aurangabad of the Respondent No.1 Company and for other reliefs which have been narrated in the Petition.

2. The Petitioners 1, 2 and 3 are the Director and Shareholders of the Respondent Company respectively and for the sake of brevity and convenience they are referred to as "Jain Group". Respondent No.1 is a Public Limited Company listed on Bombay Stock Exchange, having its Registered Office at A-6, MIDC, Industrial Area, Chikalthana, Aurangabad, Maharashtra and office at 212-B, Shreyash Industrial Estate, Western Express Highway, Goregaon(E), Mumbai. Respondent No.2 Mr. Shilpin Patel who is the Managing Director of Respondent No.1 and Respondent No.3 and 4 are the Directors of the Company. Respondent No.3 is the wife of the Respondent No.2. For the sake of convenience and brevity Respondent No.2 to 4 are referred to as "Patel Group".

3. The main cause of this Petition is that the Respondents have purportedly sought to delete the names of the Petitioners from the Register of Members. The Petitioners contend that such purported deletion, if at all, has been made, is wrongful, illegal, and in express contradiction to the provisions of Companies Act 2013 and the same is *non-est* and not binding upon the Petitioners. The Petitioners validly and legally continue to be the members of the Respondent No. 1 Company and the Respondents are not entitled to in any manner whatsoever interfere with the Petitioner's rights and entitlements as members of the Respondent No.1. The jurisdiction of this Tribunal is invoked pursuant to the consent terms dated 25.04.2013 and the consent order dated 29.04.2013 passed by the Company Law Board in Company Petition No. 37 of 2009 wherein liberty was expressly reserved to the parties to approach this Tribunal for implementation / clarification of the terms and conditions agreed upon in the consent terms.

It is stated, the Petitioners with their present shareholding of 47.67% have duly complied with the mandate of section 244 of the Companies Act 2013 as the Petitioners hold more than 1/10th of the issued Share Capital of the Respondent No.1 Company therefore, the Petitioners have the *locus standi* to file the present petition.

4. It is contended in the petition that on 6.11.2017, the Respondent No.1 has filed its annual return for the year 2016 and 2017 to the Registrar of Companies along with MGT-7 wherein it has been shown that the shares held by the Petitioners have been purportedly transferred in the name of the Respondent No.2. The Petitioners became aware of the same only on 14.11.2017 when the petitioners took inspection of the documents filed by the Respondent with the RoC from the Ministry of Corporate Affairs official website, further, the inspection requests, under provisions of Companies Act dated 12.12.2016 and 26.12.2016 by the Petitioner No.3 have wrongfully and illegally



been denied by the Respondents vide their letter dated 15.2.2017 on untenable, illegal and wrongful grounds. The Respondents have failed, neglected to give inspection of documents of Respondent No.1 Company to the Petitioners which they were entitled to as Directors and Shareholders of Respondent No.1 Company and for which inaction the Petitioners have filed a Misc. Company Application No.46 of 2017 in Company Petition No. 37 of 2009 before this Tribunal and the same is pending. The various wrongful, illegal and fraudulent acts and deeds of the Respondents have been questioned in this Petition.

5. Admittedly the Respondent Company is a sick Company and was referred to BIFR. The Respondent No.2 approached the Petitioners who had agreed to bail out the Respondent No.1 Company and the Petitioners agreed to take over 50% of the then existing promoter's stake which was to be taken over by the Respondent No.2. Thus, it was agreed that out of 3,29,184 shares which belonged to the existing promoters the Respondent No.2 would retain 1,64,592 shares and would transfer 1,64,592 shares to the Petitioners. A Memorandum of Undertaking dated 26.10.2004 was entered between Respondent No.2 on one part and the Jain Group/Petitioners on the other part whereby the Petitioners agreed to bring in Rs.1 crore towards subscription of 10 lakh equity shares. Subsequently, various disputes have arisen between the parties and as far as Petitioners are concerned, they have pumped in the requisite funds in to the Company as promised by them. Accordingly, records show that the Petitioners collectively hold about 47.67% of shares in the Respondent No.1 Company. In proof of their holding, the Petitioners have annexed the share certificates to this Company Petition. It has been specifically agreed between the parties in the 'consent terms' attached to the Orders dated 29.4.2013 of the Hon'ble Company Law Board, Mumbai that upon signing of consent terms and payment of Rs.2 crores by the Petitioners as provided in clause 6 of the said consent terms, Respondent No.2 shall hand over to the Petitioners 4,70,000 original sharecertificates fully paid up with a face value of Rs.10/- and 1,66,153 equity shares of the reduced face value/paid up value of Rs.0.50 to the Petitioners or their nominees. Respondents shall sign the necessary transfer forms and hand over the same along with the aforesaid share certificates to the effect that the transfer of the aforesaid shares. Upon the transfer of such shares, Respondent No.1 shall rectify the Register of Members in terms of section 111 of the Companies Act, 1956 to include the names of Petitioners and/or their nominees as aforesaid as members/shareholders of Respondent No.1. Upon the payment of certain amounts as per said consent terms it is made clear that the amounts so paid shall be treated as consideration for transfer of the aforesaid 4,70,000 shares of face/paid up value of Rs.10/- each and 1,66,153 equity shares of reduced value of Rs.0.50 each by the Respondent No.2 to the Petitioners. And it has been specifically agreed that the said amount shall be the full and final payment as consideration for transfer of the said shares and Respondent No.2 also declares and

Approved:

confirm that there is no impediment/encumbrance on the transfer of the said shares except the order dated 11.5.2009 passed by the Company Law Board in Company Petition No.37 of 2009.

6. There are certain reciprocal obligations on the part of the parties in terms of the abovesaid consent terms attached to the orders of the Company Law Board dated 29.4.2013. Now, the point of dispute as stated *supra* is that the Petitioners have come to know that their entire shareholding has been transferred to Respondent No.2 without any basis, while the possession of the share certificates is still with them. There is no execution of any transfer deed in favour of the Respondent No.2. In view of the above, the present petition has been filed seeking urgent interim orders from this Tribunal.

7. The Senior Counsel appearing on behalf of the Petitioner had drawn our attention on the share certificates, the orders passed by the Company Law Board, and the consent terms attached to the said orders. It is contended that the Petitioners have fully and completely complied with all the conditions of the Consent Terms and if at all some amounts which according to the Respondents, Petitioners have not paid, is purely because the same are not necessary and there is no such requirement of making any payment.

The Counsel appearing for the Respondents strenuously contended that there is a breach of terms and conditions of the consent terms and the Respondent No.1 Company had cancelled the said shares. Apart from that, the knowledge of the cancellation/transfer of shares is known to the petitioner on 6.11.2016 and while the Miscellaneous Application filed before the Tribunal in CP No.37 of 2009 is still pending, there is no point in moving the fresh Company Petition and above all, there is delay and latches on the part of the Petitioners in approaching this Tribunal and there is no urgency for passing any interim orders. This Bench specifically questioned the Counsel for the Respondent that what prejudice would be caused if an interim order is passed in favour of the Petitioners and under what provision of law can the Respondent cancel the shares unilaterally? There is no proper explanation from the side of the Respondents.

8. We have carefully gone through the documents attached with the Petition and the pleadings made therein. We are of the considered view that there is *prima facie* case in favour of the Petitioners as the share certificates and the covenants in the consent terms are very clear and project in unequivocal terms that the petitioners are the bona fide shareholders with substantial shareholding in the Respondent Company and any illegal/mala fide act on the part of the Respondents shall tilt the balance convenience and the Petitioners would be put to irreparable loss which cannot be compensated in terms of money. However, in any case the observation made herein above shall not cause any prejudice to the either side on final disposal of main Petition on its merits.

H. P. R. Sharma:

We, therefore, pending final disposal of the present Petition, order as follows :-

- i) The Respondents jointly and severally restrained by way of an injunction, from any manner disputing or objecting the status of the Petitioners as Members/Shareholders of the Company and further maintain status quo ante that prevailed as on 16.11.2016 and further to acknowledge the Petitioners as Members and Shareholders of the Respondent Company with full rights.
 - ii) Respondents are hereby restrained by this order of injunction from creating any third party interest in the shares of the Petitioners which have alleged to have been transferred in the name of the Respondent No.2.
 - iii) Pending the final hearing and disposal of the present petition, Respondents shall not convene any general meeting and extra ordinary general meeting of the Respondent No.1 without a specific leave of this Tribunal and without sufficient notice to all the Members, particularly the Petitioners, and shall not act in contravention of the consent terms dated 29.4.2013.
 - iv) That pending final hearing of the Petition, Respondents shall not create any third party rights or alienating the Assets of the Company.
9. The Respondents shall file the counter affidavit, if any, within two weeks after serving a copy to the other side and the Petitioner shall file Rejoinder if any within two weeks thereafter. The matter is posted for hearing on 29.01.2018.

10. Hence ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)

Date : 13.11.2017

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Sd/-

M.K. SHRAWAT

Member (Judicial)