

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CA. No. 01/73/16

In the Matter of

Sh. Lal Chand Singhal V/s. M/s. Moongipa Investments Ltd. & Ors.

Order Delivered on: 21.11.2017

CORAM:

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

Present: Mr. Lal Chand Singhal

ORDER

Per Ms. Ina Malhotra Member (J)

The present application has been filed under Section 73(4) of the Companies Act, 2013. The petitioner had given a sum of Rs. 75 lakhs to be kept as a fixed deposit with the Respondent Company namely, Moongipa Investments Ltd. This amount was to be repaid on maturity with interest @15% p.a. by 31st March, 2015. It is submitted that the company has repaid only Rs. 50,000/- after 31st March, 2015. The petitioner has claimed Rs. 86,92,623/- which is inclusive of interest till the date of filing of the petition. It is the petitioner's case that despite various requests and demands, the respondent company has failed to

liquidate its liability towards the applicant, and has not adhered to the mandate under Section 73 of the Companies Act, 2013.

As per further averments, the respondent company was engaged in the business of share trading and was registered with SEBI. Allegations are that the Directors speculated heavily and have misappropriated the funds of its investors. Reference is made to an order of SEBI observing that the Directors had diverted the funds to other Group Companies in a bid to cheat its investors. The petitioner has alleged that respondent's Directors, Mr. Madhur Aggarwal and Mr. Sudhir Aggarwal have transferred their personal properties fraudently for inadequate consideration being a family property BN-105(West), Shalimar Bagh, Delhi-88. The applicant prays that the said transfers of the properties be declared null and void and be attached by this Bench as they were carried out with the intention of defeating the claims of the investors and defrauding them. It is prayed that the personal property of the Director Mr. Shiv Kumar Aggarwal jointly held with his wife, Ms. Pushpa Aggarwal be attached by this Bench.

2. Due notices were issued to the Respondent Company through their Directors. Initially a second charge was created on property bearing no. 602, Pocket 2, Block 2A, Sector 18-B, Dwarka Phase-II, Delhi 110075 and 108 Block BN, West Shalimar Bagh near Shalimar Bagh Public School, Delhi-110088. However, this turned out to be the personal property of the Directors and had been mortgaged to Karnataka Bank. The said property has been sold to redeem the mortgage. The applicant

seeks attachment and sale of the personal property of Directors on grounds that the entire transaction of the respondent company is based on fraud and they have duped several investors as observed by SEBI. It is also noted that the personal properties of the Directors have been attached by SEBI. The applicant however has no recourse before SEBI as the money given was not in the course of trading.

3. The non-payment of an amount by the respondent company invites punishment under section 73(4) of the Companies Act, 2013. The ROC is directed to initiate necessary steps for prosecuting the directors of the company. The applicant is also entitled to recover this amount in execution proceedings through a court of competent jurisdiction. It is also alleged that the Directors have siphoned off the funds to speculate and create personal assets thereby causing a wrongful loss to its investors giving rise to breach of its fiduciary duties. However, no specific details are provided to substantiate the same. The prayer with respect to attachment and sale of the personal properties however cannot be directed by this Bench only on averments of fraud and diversion of money from the Respondent Company for purchase of assets in their personal names as the same is not based on any evidence. The prayer that the conveyance of the properties for inadequate consideration, done with the view to avoid attachment by courts, be declared null and void is also outside the jurisdiction and domain of this Bench. Cancellation of conveyance deeds can only be done through a civil court.



4. In view of the facts and circumstances of the case, this petition is disposed off with directions to the ROC to initiate necessary prosecution under section 73(4) of the Companies Act, 2013. The matter be referred by the ROC to the SFIO to make an inquiry into the allegations of siphoning off the funds, specially of inter corporate deposits, and if retrievable, take adequate steps to protect them ~~from~~ further dissipating ~~them~~ so as to meet the liability of the applicant herein and to initiate punishment akin to the provisions of Section 74(3) of the Companies Act, 2013. The applicant is also entitled to seek recovery of his principal amount with upto date interest in execution proceedings.

Petition disposed off in terms of the above.

-Sd-

(Ina Malhotra)
Member (Judicial)

(Sapna Bhatia)