

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

Contempt Application No.340/KB/2017

In the matter of:

Shri Prabhu Nath Sharma & 5 othersPetitioners
-Versus-
Shri Biswanath Sharma & 3 othersRespondents

Order Delivered on 31st August 2017

Coram:

Vijai Pratap Singh, Member (J)

Jinan K.R., Member (J)

For the Petitioner : 1. Mr. Anirban Ray, Advocate
2. Mr. Arupnath Bhattacharjee, Advocate
3. Mr. Amritlal Chatterjee, Advocate
4. Mr. Nabarun Banik, Advocate

For the Respondent : 1. Mr. Ratnanko Banerjee, Advocate
2. Mr. Kuldip Mallik, Advocate
3. Mr. P.P. Biswal, Advocate
4. Mr. Sristi Barman Ray, Advocate

ORDER

Per Vijai Pratap Singh, Member (J)

Applicants have filed this contempt application under Sec.425 of the Companies Act, 2013 on the basis that OP/respondents No.1 to 4 have violated the order dated 14/9/2011 passed by the then Company Law Board whereby the following directions were issued: -

- i. The assets of the company would be divided. The petitioners group would have the Kolkata Unit, while the respondents group would get the Delhi and Baddi (in Himachal Pradesh) unit.
- ii. The assets of the company to be valued by a Valuer.
- iii. The petitioners would retain the company.

- iv. The respondents would surrender their shares in the company to the petitioners for cancellation.
 - v. The respondents group would float a new company to carry on the business as it was carrying on.
 - vi. The respondents shall not use the company name Sharma Ayurved Pvt. Ltd. The respondents were directed to float a new company by some other name by adding the suffix or prefix to the present name of the company.
2. Applicants have stated that on 28/1/2016 the applicants came to know that in spite of debit freeze of the account of the company maintained with the Yes Bank, Punjabi Bagh Branch, New Delhi, the said account has been debited and transaction have been allowed in respect of the said account of the R-1 company. Petitioner was informed by the Yes Bank that debit freeze of the account of the company maintained was removed on the basis of a written request dated 7/10/2015 on the letter head of the company signed by Mr. Anand Sharma and Mr. Biswanath Sharma. On perusal of the account statement petitioner came to know that Rs.5 lakh was paid through RTGS on 20/10/2015 to M/s Gupta & Co. i.e. after the date of debit freeze on 23/5/2012 under the instruction of Mr. Anand Sharma and Mr. Biswanath Sharma.
3. It is further alleged that none of the petitioners gave any instruction to Yes Bank to debit the account of the company maintained by it to make any payment to anybody.
4. On the above basis petitioner/applicants have moved contempt application against the respondents and filed affidavit along with the order passed by the then Company Law Board.
5. Petitioners have stated that contemnors are acting in willful, deliberate and contumacious violation of the order dated 14/9/2011 passed by the then Company Law Board in CP No.49/2008. Contemnors have continued to represent themselves as a part of the company Sharma Ayurved Pvt. Ltd.; the

contemnors even in the year 2015-16 have continued to transact in the name of the company and prepared balance sheet in the name of the company in spite of being directed not to use the name of Sharma Ayurved Pvt. Ltd. Subsequent to the order of the Company Law Board, the contemnors have sought to act as directors of the said company and have debited sums of money from the bank account no.010684000000136 held with the Yes Bank, Punjabi Bagh Branch, Delhi. Contemnors have continued to transact in the name of the company and has taken advance from parties of the company in the name of the company. Therefore, petitioners have moved this contempt application.

6. Keeping in view of the assertion and order passed by the then Company Law Board and document submitted by the petitioner/applicants, we hereby direct the respondents/alleged contemnors to show cause as to why they should not be held guilty of willful, deliberate and contumacious violation of the order dated 14/9/2011 passed in CP No.49/2008 by the then Company Law Board.

7. Petitioners are directed to serve notice on the respondents within 15 days from the date of this order. Reply may be made within 15 days with advance copy to the petitioners and rejoinder, if any, may be filed within 15 days thereafter with advance copy to the respondents.

List the matter on.....

10/10/2017

sd/-
Jinan K.R.,
Member (J)

sd/-
Vijai Pratap Singh,
Member (J)

Signed on 31st August 2017