

BENCH-I

**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

C.P No.370/KB/2017  
IA.No.383/KB/2017

Present: Hon'ble Member (J) Shri Vijai Pratap Singh  
Hon'ble Member (J) Shri Jinan K.R

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 20<sup>th</sup> September 2017, 10.30 A.M**

Name of the Company		Binay Kumar -Vs- Kumar Auto infra (P) Ltd & Ors	
Under Section		241-242	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. CS Deepak Kumar Khaitan, F.C.S. Respondent No. 1 & 2  
Practising Company Secretary *Khaitan*  
20/09/2017

2. CS Siddhi Dhanbhai, Respondent No. 1, 2, 3  
Practising Company Secretary *Siddhi*  
20/09/17

1. Ratnak Banji, Sr. Adv  
2. Swapna Choudy, Adv  
3. Sidhanta Sharma, Advocate

*Reliance*

*20/09/17*

## ORDER

The Ld. Senior Counsel for the petitioner and the Ld. PCS for Respondent Nos. 1 and 2 are present.

The Demurrer application IA No.383/KB/2017 has been moved by the Respondent Nos. 1 and 2 with the prayer that the petition be dismissed since it is <sup>not</sup> maintainable because the petitioner/non-applicant does not have the requisite shareholding as prescribed under Section 244(1)(a) of the Companies Act, 2013 and hence the petitioner does not have the right to apply under Section 2412 of the Companies Act, 2013.

On this basis, the Ld. PCS for the Respondent Nos. 1 and 2/applicants made a request that the petition be dismissed on this ground.

On perusal of the record, it appears that in the demurrer application itself at page No.17, the respondents/applicants have stated that there are only three share holders, namely, Pankaj Kumar Rai, Guddy Devi and Binay Kumar, holding total number of 3400 shares. The petitioner/non-applicant is among one of them.

Even if the petitioner/non-applicant does not have requisite qualification of 10% shareholding in the Respondent No.1, company, the application is not maintainable simply on the ground that the petitioner/non-applicant has more than 1/10<sup>th</sup> number of the members in the respondent company. Therefore, the demurrer application is liable to be dismissed.

The respondents are directed to file reply within three weeks with copy to the opposite party and thereafter, rejoinder, if any, may be filed by the petitioner within three weeks with copy to the opposite parties.

The Ld. Counsel for the respondent Nos. 1 and 2 has filed the rejoinder, which may be kept in the record.

Both the parties will file their written statements within 15 days.

List on 17-11-2017.

The interim order passed earlier, shall remain effective till next date of hearing.

*Sd/-*  
(Jinan KR)  
Member(J)

*Sd/-*  
(Vijai Pratap Singh)  
Member(J)