

02/8/17

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA**

CP NO. 370/KB/2017

IN THE MATTER OF :

The Companies Act, 2013 ;

And

In the matter of :

Section 241, 242 & 244 and other applicable
provisions of the Companies Act, 2013

And

In the matter of :

Binay Kumar

..... Petitioner

Vs.

Kumar Auto Infra Private Limited & Ors.

..... Respondents

Judgment/Order delivered on : 02-08-2017

CORAM : MS. MANORAMA KUMARI, MEMBER(J)

For the petitioners :

Mr. Ratnanko Banerjee, Senior Advocate
Ms. Swapna Choubey, Advocate
Mr. Sidhartha Sharma, Advocate
Ms. Namrata Basu, Advocate

Per : Ms. Manorama Kumari, Member(J)

ORDER

The instant Company Petition being No. 370/KB/2017 filed by the petitioner under Sections 241, 242 & 244 of the Companies Act, 2013, upon the respondent with the prayer for injunction.

The Ld. Lawyer of the petitioner submitted that he is moving the petition without serving the notice to the respondents, as the matter is urgent in view of the fact that the Respondent Nos. 2 to 4 have already dealt with the project of the Company and there is every likelihood that on receiving the notice, the respondent(s) may take further steps which will be prejudicial in the interest of the petitioner. In that event, the very purpose of filing of the petition will be frustrated.

On perusal of the record, it reflects that the petitioner holds 30% of equity shares of the Company and was appointed as Director on 18-10-2013 as per Form 32 (Page 157) uploaded in the MCA portal by the Respondent No.2, being the authorised signatory vide resolution dated 18-10-2013.

It is further submitted that the Company was facing paucity of fund and was not in a position to carry out the business and on approach by the Respondent No.2 and 3, the petitioner has infused substantial sum of money in the land development project of the Company. The petitioner is a well established businessman dealing in the real estate business, looking to profitable venture

agreed to invest in the Company. Accordingly, the Respondent No. 2 on behalf of the Company entered into agreement on 9th October, 2013 with the petitioner (vide Annexure – 'D') for investment in the company and has also decided to induct the petitioner as shareholder and Director of the company to take all steps for the development of the land.

While development work is going on, a dispute arose relating to the acquisition of land, but the petitioner has settled the dispute by way of paying huge amount i.e. Rs. 100,00,000/- (Rupees one crore) and entered into compromise agreement on 14th September, 2016 as submitted by the petitioner.

It is further contended that the respondent has attacked the workers engaged in development work to take over the possession of the land. The petitioner has filed an FIR to that effect on 05-10-2016.

Despite best endeavour by the petitioner to sort out all the differences with the respondents but all went in vein.

Meanwhile, the respondent has also succeeded in appointing the Respondent No.4 as Director of the Company, illegally and thereby trying to take absolute control over the Company.

Under such circumstances, there is every apprehension that the Respondent(s) may alter the shareholding pattern of and in the Company to perpetrate their control and may alienate the assets of the Company.

Heard the petitioner at length and seen the documents annexed therein. I found that there is prima facie case in favour of the petitioner and if interim protection is not granted at this stage then it will cause irreparable loss to the petitioner.

Under such circumstances, I am inclined to grant status quo in the shareholding pattern of and in the Company and also the composition of the Board of the Company. Further, the Respondent(s) are also restrained from alienating and/or transferring and/or creating any third party interest in the Company till the next of the hearing.

Sd/-

Manorama Kumari
Member(J)