

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, MUMBAI**

**C.A. NO. 99/2015**

**IN**

**T.C.P. NO. 102/397, 398/NCLT/MB/2014**

CORAM:

**SHRI M. K. SHRAWAT**  
MEMBER (JUDICIAL)

In the matter of Sections 397 & 398 and Section 241, 242 of the Companies Act, 2013.

BETWEEN:

Mrs. Shinie B. Nair .. Petitioner

AND

M/s. Proquest Solutions Private & Ors. .. Respondents

**PETITIONER:**

Mrs. Shinie B. Nair  
1-A, Diamond Park  
Park Street, Wakad  
Pune 411 057

**RESPONDENTS**

1. M/s. Proquest Solutions Private Limited  
24, Pride Portal, Behind ICC  
Off Senapati bapat Marg  
Bahiratwadi  
Pune 411 016. .. Respondent No.1
2. Mr. Biswas Nair  
24, Pride Portal, Behind ICC  
Off Senapati bapat Marg  
Bahiratwadi  
Pune 411 016. .. Respondent No.2

**PRESENT ON BEHALF OF THE PARTIES:**

**FOR THE PETITIONER**

Mr. Anirban Tripathy, Advocate

FOR THE RESPONDENTS

Mr. Amol Nehru, Advocate for Respondent No.2

**ORDER**

**Heard on : 04.01.2017**

**Date of Order : 13.02.2017**

1. This Miscellaneous Application was filed before the then CLB, Mumbai Bench on 3<sup>rd</sup> June, 2015. This Application has been filed by the Petitioner of the main Petition seeking ad-interim directions as under:-

"9. In the circumstances the Petitioner prays that the Respondents be directed to:

- a. Disclose the location of the fixed assets;
- b. Disclose the location of the books of accounts, minutes book, agreements, contracts etc;
- c. Allow the Petitioner access to the fixed assets, books of accounts, agreements, contracts etc;
- d. Furnish the names of people from whom money is receivable as disclosed in schedule 13;
- e. Furnish the names of people from whom money is receivable as on date;
- f. Allow inspection of books of accounts, minutes book, agreements with customers, agreements with employees etc;
- g. Allow the Petitioner to send legal notices u/s 433 and 434 of the Companies Act 1956 to the entities listed in paragraph 5 above calling upon them to pay the money owed by them;
- h. Allow the Petitioner to initiate legal action against Mr. Prashant Gosavi for having illegally sold the assets of Respondent No.1 Company;
- i. Any other and or further order deemed fit in the circumstances of the case be passed;
- j. Cost of this Application be provided for;"

2. From the side of the Applicant, Ld. Representative has pleaded that the litigation is not only on the issues of oppression and mismanagement, but also involved matrimonial litigation because the Petitioner is wife of Respondent No.2. He has informed that the Respondent No.1 Company was incorporated on 5<sup>th</sup> of August, 2003 wherein the Petitioner is holding 50% equity shares. He has further informed that on getting married on 19<sup>th</sup> of November, 2000 the said Company was co-founded by the Petitioner. The reason for filing this Application was that from the Reply filed by the Respondents the Petitioner came to know that one Mr. Prashant Gosavi, landlord of premises No. 204, Pride Portal, Shivajinagar, Pune, had illegally removed the assets of the R1 Company. The Petitioner is, therefore, willing to take legal action. The next reason is that in the accounts of the Company, certain debtors have been shown and the Petitioner is requesting to pass an Order to issue legal Notices to all those customers for the recovery of the outstanding payments. Ld. Advocate has referred Schedule 13 of the accounts drawn for the accounting period ended on 31<sup>st</sup> March, 2012.

3. On the other hand, from the side of the Respondents, a Reply has been filed wherein it was mentioned that due to certain unwarranted actions of the Petitioner, such as freezing of the bank account, the Company is in a deadlock situation. Due to matrimonial differences between the Petitioner and the Respondent No.2, the Company was adversely affected and the employees of the Company have not been paid the salary. It is alleged that while the Respondent No.2 was in USA, the Petitioner had removed the documents and accounts from the registered office of the Company. He has informed that pursuant to a leave and licence agreement dated 15<sup>th</sup> March, 2011 an office premises was taken on lease owned by Mr. Prashant Gosavi. Another part of the office was taken on leave and licence

basis by the Company from one Mr. Bijoy Bhaskar Nair. In the year 2012, Mr. Gosavi has asked to vacate the office. A termination letter dated 1<sup>st</sup> March, 2013 was issued. The Petitioner and the respondent No.2 have mutually decided to shift office of the Company. A new office premises was taken on rent for a monthly rent of ₹1,68,540/- at Park Street, Wakad, Pune. This premises was also used for residential purpose as well. From 28<sup>th</sup> February, 2013 the Company stopped operating from the said old office premises. Later on, the Respondents came to know that the said landlord had sold the assets of the Company like computer and other electrical gadgets lying the office No. 204, Pride Portal, Behind ICC, Off Senapati Bapat Marg, Bahiratwadi, Pune 411 016 and handed over the cheque in the name of Respondent No.1 Company. He has further informed that at present Mr. Gosai is no more alive; hence the Application in question has no substance because no legal action is now possible. In respect of the recovery of the outstanding debts, it is explained that the accounts of the Company have been frozen due to which the day-to-day business operations of the Company have become standstill. The ad-interim relief claimed in the Application has no relevance at this juncture because the main Petition is pending for disposal.

4. Heard both the sides at some length. The main Petition along with enclosures perused. The first claim of the Applicant revolves around the removal of assets of the Company alleged to have been sold by late Mr. Prashant Gosavi. It is informed that being an owner of the premises in question, he demanded to vacate the office of the Company and in that process of shifting one day sold the gadgets such as Computers, etc. The Respondents have informed that the sale consideration was handed over by the said owner to Respondent Company by a cheque. In a situation when an event had already taken place and the said owner is no more alive; hence an interim

injunction is neither legally warranted nor lawfully enforceable. It is a trite law that an "injunction" or "stay" by an interlocutory order is passed when there is an apprehension of irreparable loss by an action of any of the parties in near future. So, the stay is granted in respect of an event yet to take place. An action which had already happened cannot be reversed by legal formalities. In the present situation, when a cheque has already been received by the Respondent Company; therefore, ought to have been duly accounted for in the regular books of accounts. The said receipt of consideration would have been duly reflected and thus automatically got merged in the accounts of the Company. I, therefore, hold that no interference at this preliminary stage is legally warranted.

5. As far as the question of recovery of the outstanding debts are concerned, the business interest of the Respondent No.1 Company is required to be safeguarded. It is not a case of the Petitioner that the accounts of the Company have not truly disclosed the outstanding debts. Once in the audited accounts a Schedule is annexed reflecting therein the "Trade receivables", then naturally the recoveries shall also be duly accounted for as and when the outstanding amounts recovered. At best, a direction can be given that this Bench be informed the efforts taken to recover the outstanding amounts. The Officers of the Company are hereby directed to take due legal steps to recover the outstanding amounts. To accomplish this direction, the Petitioner as well as the Respondents are responsible because both of them are having equal shareholding and are responsible for the losses, if any, of the Company.

5.1 At this juncture, it is worth to mention that the intention of the legislation for incorporation of Section 241 and Section 242 of Companies Act, 2013, in my humble understanding, is to safeguard

the affairs of the Company to conduct in a manner not prejudicial to public interest or oppressive to any member. Only then the members of the Company can enjoy the benefits of profit. These directions are sufficient to serve the purpose and redress the grievance of the Applicant.

6. As a result, the Application is partly allowed on the terms directed hereinabove. The Application stands disposed of and to be consigned to records.

Dated: 13<sup>th</sup> February, 2017

Sd/-

**M.K. SHRAWAT**  
**MEMBER (JUDICIAL)**