

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI**

**C.A. No. 68/2016**

**In**

**C.P. No. 01/245/NCLT/MB/MAH/2016**

**And**

**C.P. No. 36/397-398/CLB/MB/2014**

CORAM:

Present:

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

In the matter of Section 245 of the Companies Act, 1913.

BETWEEN

**Mr. K.N. Pillai & Anr. (Petitioners)**

Versus

**Mr. R. Prasanth & 3 Ors.**  
(Respondents)

**Mr. R. Prasanth (Petitioner)**

Versus

**M/s. UBC Engineers Pvt. Ltd. (Respondents)**

**ORDER**

Reserved on 06<sup>th</sup> October, 2016

Order pronounced on 17<sup>th</sup> October, 2016

1. The Application under consideration is submitted on 21<sup>st</sup> September, 2016 wherein the main prayer, and argued today, is as under:

***"1. Be pleased to direct the Respondent No.1 to sign the said affidavit for upgradation and all other necessary documents as and when required by the Company."***

2. From the side of the Applicant Ld. Advocate Ms. Prachi Manekar appeared and from the side of the Respondent Nos. 1, 2 & 4 Ld. Advocate Mr. Bidan Chandran appeared. Both sides are heard at some length.

3. The main argument of the Applicant is that the Company under consideration i.e. **UBC Engineers Pvt. Ltd.** is enlisted as a contractor with Military Engineering Services (MES) and Director General of Naval Projects (DGNP). For the purpose of upgradation from 'A' class to 'S' class, certain formalities are required to be completed immediately. The said authorities have provided a proforma of the

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Affidavit required to be submitted. A copy of the said proforma is placed in the Compilation. Thereafter, the attention is drawn on the said declaration wherein the particulars of the property are described, situated at Uran, Navi Mumbai and the value is shown as Rs.1.25 crores. The Affidavit has also stated that the said immovable property has been hypothecated for Rs.35 lakhs for which three of the Directors i.e. i.e. Shri K. Narayana Pillai, Shri Kailash M. Barde and Shri Pramod Narayan have agreed to sign the said Affidavit. However, the Respondent i.e. Shri R. Prasanth has refused to sign the said Affidavit. Ld. Advocate for the Applicant has pleaded that for the benefit of the Company, the said document is immediately required to be furnished with the concerned authorities for upgradation and to get the contract work. It has also been pleaded that even if the Respondent has any doubt, then an undertaking will be given by rest of the Directors that Shri R. Prasanth shall not be held responsible in any manner personally in respect of the said property. The Ld. Counsel has also made a statement that if Shri R. Prasanth agrees to sign the said document, then the other Directors indemnify him in respect of the said property by taking all legal responsibility on themselves.

4. From the side of the Respondent, a reply is on record and in support Ld. Advocate has pleaded that the value stated in the said Affidavit is incorrect because the bank has sanctioned a huge loan of Rs.4 crores after valuing the property in question at Rs.1.86 crores. According to him, the Applicant has deliberately mentioned the figure at Rs.35 lakhs to suppress the correct figures. He has also drawn my attention to an agreement of hypothecation. The Compilation consists of sanction of credit facility letter dated 7<sup>th</sup> November, 2015. He has also vehemently objected the behaviour as well as conduct of the rest of the Directors towards the Respondent and vehemently argued that the Respondent is apprehensive of an act of cheating by rest of the Directors. However, he has put a condition that even being one of the Directors the Respondent is not aware the extent to which the properties of the Company have been mortgaged to the bank. Therefore, the Applicant should be directed to provide bank account with the details of the charge created against the property of the Company, he has pleaded.

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5. Having heard the submissions of both the sides and after due consideration of the facts and circumstances of the case as well as evidences filed in the Compilation, I hereby pronounce an Interim Order as under:-

ORDER

- i) that in the interest of the business of the Company, it is justifiable to furnish the requisite documents before the concerned authorities so that status of the Company can be upgraded from 'A' class to 'S' class category of contractors;
- ii) that keeping in mind overall business activity and the conditions under which the Company is running the business, it is hereby deemed fit to direct Shri R. Prasanth to sign the Affidavit as appeared on pages 20 and 21 of the Company Application;
- iii) that on signing of this Affidavit by Shri R. Prasanth, he shall not be held personally responsible in the event of any legal action pertaining to the said property in any manner whatsoever. The correctness of the figures if in case questioned, as noted in the said Affidavit proforma and as certified by rest of the three Directors shall be answerable by them and not by Shri R. Prasanth. In respect of the property in question, in the event of signing the Affidavit, Shri R. Prasanth is hereby given immunity by rest of the Directors that under no circumstance he shall be questioned or held responsible for furnishing of incorrect information, if at all objected by any authority;
- iv) that considering the pleadings of Ld. Advocate for the Respondent, I consider it reasonable to direct the Petitioner to supply the information about the extent of charge created against the properties of the Company by any bank so that the Respondent should be aware of the latest position of the liabilities of the Company. A letter from the bank shall serve the purpose, as suggested, certifying the properties mortgaged and the charge created. This

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information shall be handed over in a sealed cover to the NCLT Bench Officer, Mumbai Bench so that the information can be perused at the time of the hearing of the C.P.

- v) The Petitioner shall handover the audited Profit & Loss account and Balance Sheet alongwith annexures and the report of the Auditors for the accounting period ending 31<sup>st</sup> March, 2016 to the Respondent Shri R. Prasanth within a week's time i.e. up to 13<sup>th</sup> October, 2016;
- vi) Further, it is advised to both the sides that no steps shall be taken and shall not act in any manner which can be detrimental to the business interest of the Company;
- vii) that there shall be no change in the directions already given vide an Order (Interim) dated 9th September, 2016 according to which the next date of hearing is **20<sup>th</sup> October, 2016.**

C.A. No. 68/2016 is hereby disposed of on the terms and conditions as listed hereinabove. No Order as to cost.

Dated: 17.10.2016

sd/-

**Shri M.K. Shrawat**  
Member (Judicial)