

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. 61(ND)/2015
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

SH. S. K. MOHAPATRA
Hon'ble Member (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF SPECIAL BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.03.2017

NAME OF THE COMPANY: Sh. Kuldeep Kaul & Anr
Vs.
M/s. HBE Aviosecc Pvt. Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 397/398

S.NO. NAME DESIGNATION REPRESENTATION SIGNATURE

MR. A. S. CHANDHIK, SR. ADV.
MR. NPS CHAWLA, ADV.
MR. SUJOY DATTA, ADV.
MS. ARVEENA SHARMA, ADV.
MS. SWETA KAKKAD, ADV.
MR.

Petitioner

Sujay Datta

1. Mr. Siddharth Yadav, Adv.
2. Mr. Vijeta Mukherjee, Adv.
3. Ms. Tanushree Ghosh, Adv.
4. Mr. Shivendra Mishra, Adv.

Respondents.

Ygnod

Respondent No. 4

Shw

~~11~~

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. 62(ND)/2015
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

SH. S. K. MOHAPATRA
Hon'ble Member (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF SPECIAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 24.03.2017

NAME OF THE COMPANY: Mr. Nand Lal Bhatia
Vs
Sh. Kuldeep Kaul & Anr. M/s. HBE Aviosec Pvt. Ltd. & Ors

SECTION OF THE COMPANIES ACT: 397/398

S.NO. NAME DESIGNATION REPRESENTATION SIGNATURE

MR. A. S. CHANDHIK, SR. ADV.
MR. NPS CHAWLA, ADV.
MR. SUJOY DATTA, ADV.
MS. AR VEENA SHARMA, ADV.
MS. SWETA KAKKAD, ADV.

Respondents

Sujay Datta

1. Mr. Siddharth Yadav, Adv.
2. Ms. Vijeta Mukherjee, Adv.
3. Ms. Tanushree Ghosh, Adv.

Petitioners.

Tanushree Ghosh

[Handwritten mark]

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. 38(ND)/2015
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

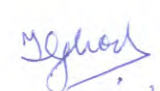
SH. S. K. MOHAPATRA
Hon'ble Member (T)


ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF SPECIAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 24.03.2017

NAME OF THE COMPANY: Sh. Nand Lal Bhatia
Vs
M/s. Horizon Broadcast Electronics Pvt. Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 397/398

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
-------	------	-------------	----------------	-----------

1.	Mr. Siddharth Yadav,	Adv	} Petitioners.	
2.	Ms. Vijeta Mukherjee,	Adv		
3.	Ms. Tanushree Ghosh,	Adv,		

	MR. A. S. CHANDNIK,	CR. ADV.	} Respondents	
	MR. NPS CHAWLA,	ADV.		
	MR. SUJOY DATTA,	ADV.		
	MS. ARVEENA SHARMA,	ADV.		
	MS. SWETA KAKKAD,	ADV.		



ORDER

Parties were afforded sufficient opportunities to arrive at a mutual global settlement with some give and take from either side, in the light of final valuation report dated 8th February, 2017 of the expert, M/s S.C. Vasudeva and Co., Chartered Accountants submitted in compliance of orders of this Tribunal. However respondents (Bhatia Group) has prayed to reject the valuation report dated February 8, 2017 or any other report filed by M/s S.C. Vasudeva and Co., thereby putting all the exercise, time and efforts undertaken since 13th August, 2015 almost back to square one.

2. It is pertinent to state here that the expert, M/s S.C. Vasudeva and Co., Chartered Accountants, was appointed as an independent auditor and valuer on 13.08.2015 as per the joint request of the parties, for finalization of statement of accounts for the period up to 31.03.2015 in respect of the year 2014-2015 for all the companies belonging to both the groups i.e. Kaul and Bhatia Group as indicated in the chart annexed to the order dated 13th August, 2015. In addition there was a direction for valuation of assets of group entities. Parties were given liberty to present their respective point of view before the expert in finalization of accounts and valuation of assets. The relevant portion of the order is reproduced below:

“Accordingly a joint request has been made to appoint an independent Auditor. The parties are adidem to appoint S.C. Vasudeva and Company

11

11

Chartered Accountants, who shall audit and finalize the statement of accounts for all the companies as given in chart (Annexure 'A') for the period up to 31.03.2015 in respect of the year 2014-2015. The Chartered Accountants would be at liberty to seek assistance from the parties to supply of documents or any other material for the purposes of finalizing the accounts. An endeavour shall be made to complete the work of Balance Sheets by 15.09.2015 and submit the same to this bench by that day. It has also been agreed that simultaneously the valuation of the assets shall also be made by the same Chartered Accountants. In that regards parties are at liberty to present their respective point of view before the Chartered Accountants as per the time given to them. The Chart Annexure "A" shall form the part of this order."

3. In compliance of the aforesaid order the auditor has undertaken audit for the financial year 2014-15 up to 31st March 2015 in respect of the following entities of both the groups.

Kaul Group Management

- i. M/s Horizon Broadcast Electronics Pvt. Ltd.,
- ii. M/s Horizon Broadcast Electronics FZE,
- iii. M/s Horizon Broadcast LLP,
- iv. M/s Horizon Electronics FZE,





Bhatia Group Management

- v. HBE Aviosecc Private Limited,
- vi. HBE Aviosecc FZE,
- vii. M/s Three D integrated Solutions Limited, and
- viii. M/s NextgenTechsolutions Pvt. Ltd.

4. In order to appreciate the extent of efforts and exercise undertaken in the matter since August, 2015, the relevant portion of the report of Mr. Vasudeva, Chartered Accountant, is quoted below:

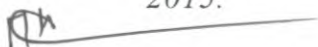
“Steps Undertaken in compliance of the Order of the Hon’ble Court

- i. Pursuant to the order a preliminary meeting of both the parties was called on 28th August 2015.*
- ii. Thereafter provisional Financial Statements were requested from both the parties to estimate the time involved and to prepare the engagement letter.*
- iii. Provisional Financial Statements except that of Nextgen were received from both the parties by 15th September and a confirmatory email was sent to the parties on 16th September 2015. It was stated in that email that the Financial Statements of Nextgen is awaited.*





- iv. *The provisional Financial Statements of Nextgen was submitted to us on 21st September 2015.*
- v. *After reviewing at the provisional Financial Statements an email dated 1st October 2015 was sent to both the parties for having a joint meeting on 5th of October 2015 to agree upon the audit engagement process.*
- vi. *In the meeting held on 5th October 2015, the audit engagement process was broadly agreed with both the parties and audit engagement letter was sent to both the parties on 7th October 2015.*
- vii. *Mr. Kuldeep Kaul confirmed the terms of the letter on 7th October. Since we are awaiting confirmation of our engagement letter from Mr.N.L. Bhatia a meeting of lawyers of both the parties was called on 14th October 2015.*
- viii. *On 14th October 2015, we received an email from the lawyers of Mr. Bhatia confirming the terms of engagement on behalf of Mr. Bhatia.*
- ix. *The engagement letter was signed by Mr. Kaul on 13th October 2015 and by Mr. Bhatia on 2nd November 2015.*
- x. *Initial list of requirements for audit purposes was sent to Mr. Kaul on 15th October 2015 and to Mr. Bhatia on 17th October 2015.*






- xi. We started receiving the information as requested in parts on various dates and the audit was commenced on 9th November 2015 in respect of all entities.*
- xii. During the course of audit, emails were exchanged with both parties on several dates to seek information on various audit issues.*
- xiii. On 25th February 2016, an email was sent to Mr. Sid Bhatia for a meeting on 26th February to discuss all open audit issues.*
- xiv. On 29th February a status report was issued by us. Copy of the same is enclosed as Annexure A on pages 99-100.*
- xv. On 16th March a status report was again sent to the parties. The same is attached as Annexure B & C on pages 101-102.*
- xvi. Thereafter meetings were held on various dates and emails exchanged to seek information on audit issues. A status report was sent on 27th April 2016 wherein it was informed that the Financial Statements post audit have been given to the respective parties. The same is attached as Annexure D on pages 103.*
- xvii. An email dated 7th May 2016 was sent to parties for visiting our office to review the Financial Statements of the other group.*
- xviii. Mr. Kaul and his team visited our office on 11th May 2016 and Ms. Savita Bhatia on behalf of the Bhatia group visited our*





office on 13th May 2016 to review the financial statements of the other group.

- xix. Mr. Kaul sent his queries on the Financial Statements of the Bhatia Group on 12th May 2016. The queries from Bhatia group were received in parts on 21st May 2016 and 23rd May 2016.
- xx. The queries raised by both the groups were discussed with the other groups on various dates.
- xxi. On 14th June 2016 email was sent to Mr. Kaul wherein the queries raised by Bhatia group were shared for seeking formal response of the Kaul Group. On 21st June 2016, email was sent to Bhatia Group seeking formal response to queries raised by Kaul Group.
- xxii. Meetings on various dates were held between both the groups to finalize the issues raised by the other group on the Financial Statements. A status report was accordingly shared on 26th July 2016 with both the parties. The same is attached as Annexure E on pages 104-105.
- xxiii. Mr. Kaul sent reply to all the queries vide email dated 17th June 2016. Reply of Mr. Bhatia was finally received on 5th August 2016.

 _____



- xxiv. *Thereafter, closing meetings were held, where all pending open issues were discussed and closed.*
- xxv. *All queries/objections raised by the Bhatia group and the Kaul group were considered and the necessary changes to be effected in the Financial Statements were advised to both the parties.*
- xxvi. *The Financial Statements of various entities were received from the respective parties, after effecting changes as outlined above on 20th August 2016. These financial statements are required to be signed by respective parties.*
- xxvii. *Audit reports in respect of financial statements of various entities were thereafter finalized at our end. The Audit reports will be released / issued after receipt of signed financial statements."*

5. M/s S.C. Vasudeva and Co., Chartered Accountants filed the final audit report on 1st September, 2016, in respect of all the eight entities of both the groups for the financial year 2014-15.

6. Subsequently on 24.11.2016 M/s S.C. Vasudeva and Co., Chartered Accountants author of the audit report was *interalia* directed to appraise whether any of the two groups owe any amount to the other group according to their audit report. In compliance of the order dated 24.11.2016, M/s S.C. Vasudeva and Co., Chartered Accountants furnished company wise details of

Handwritten mark

Handwritten signature

amount borrowed as loan from one company to other as per audited financial statements as on 31.03.2015. The auditor has also submitted its final valuation report on 29.12.2016. However after removing a typographical error, the final corrected valuation report was submitted on 08.02.2017. The summary of the final findings of the auditor and valuer is as follows:

(1) Kaul Group has to pay Rs. 11.56 crores to Bhatia Group for buying/acquiring the complete control of entities of Kaul Group and Bhatia Group has to pay Rs.9.24 crores to Kaul Group for buying/acquiring the complete control of entities of Bhatia Group.

(2) As regards inter-corporate loans the findings of the auditor is that the aggregate amount payable i.e. to be paid by the entities of Bhatia Group to entities of Kaul Group works out to Rs.9,31,11,646/- and USD 4,30,564. In addition to the above Rs.1,36,38,318/- is recoverable by HBE Aviosec Pvt. Ltd. (Company of Bhatia Group) from M/s. Govind Jewels, a subsidiary of Horizon Broadcast Electronics Pvt. Ltd., which is a Kaul Group Company.

7. While examining the final report it was submitted that M/s Govind Jewels Pvt. Ltd. does not form a part of Annexure "A" of the order dated 13.08.2015. It is also placed that audit of M/s Govind Jewels Pvt. Ltd. was not even ordered. It is accordingly placed that inter corporate loan, pertaining to M/s Govind Jewels Pvt. Ltd. may be excluded. Accordingly, the petitioner has

TH

[Signature]

submitted the following chart showing that on final adjustment of share value and inter corporate loan, a sum of Rs. 5.87 crores has to be paid from Bhatia Group to Kaul Group to arrive at the global settlement between the parties.

Valuation as per Final Report of M/s. S.C. Vasudeva and Co. using 1 year NOPAT				
Sl. No.	Description	Fair Value	Amount due to other group	
1.	Kaul Group	23.11 crores	11.56 crores	
2.	Bhatia Group	21.35 crores	9.24 crores	
Delta of Share Valuation		2.32 crores in favour of Bhatia Group		
Delta after subtracting loans as per Table 1 below : 5.87 crores in favour of Kaul Group				
Summary of Inter Company Loans as per M/s. S.C. Vasudeva and Co. Report dated 13.12.2016				
Table-1				
TABLE-1				
From	To	Amount	Currency	Amount INR

TH

m

HBE Aviosec FZE	HBE FZE	430,564	USD	26,949,350
HBE Aviosec Pvt.Ltd.	HBE Private Limited	48,419,307	INR	48,419,307
Three D	HBE Private Limited	6,544,261	INR	6,544,261
GRAND TOTAL				81,912,918

8. As per the final valuation report "Kaul Group has to pay Rs. 11.56 crores to Bhatia Group for buying/acquiring the complete control of entities of Kaul Group and Bhatia Group has to pay Rs.9.24 crores to Kaul Group for buying/acquiring the complete control of entities of Bhatia Group. Therefore after adjustment, Rs. 2.32 Crores has to be paid from Kaul group to Bhatia Group. In connection with the inter-company loans, after excluding M/s Govind Jewels, Rs. 8,19,12,918, is payable from Bhatia Group Companies to Kaul Group Companies. After adjustment of share valuation and corporate dues as per the report a sum of Rs. **5.87 crores** is payable in favour of Kaul Group from Bhatia group.





9. There is no dispute that both the parties had agreed for a separation with a global settlement in respect of the group companies. In that view of the matter, pursuant to the order of this tribunal proportionate worth of business of each group in the relevant group companies has been arrived at by the expert auditor and valuer. Valuation of the worth of the companies and respective valuation of shares are essentially complex and technical matters requiring expertise and considerable skill. In the present case parties were at *ad idem* for appointment of S.C. Vasudeva and Company. Besides as per the joint request of both the parties the named auditor was appointed to undertake the audit and valuation in question. It is impossible to calculate the real value of any share with mathematical accuracy. An element of guess-work is involved, valuation being a highly subjective matter. Ordinarily tribunal does not interfere with such expert opinion, unless there are compelling reasons to upset the finding of the expert valuer. Parties were accordingly afforded opportunities to arrive at a mutual global settlement with some give and take from either side, in the light of valuation reports of the mutually agreed expert. Nevertheless since respondent has preferred to challenge the final report, it is felt to impose certain terms to test the *bonafide* of the respondent.

10. One of the contentions of the respondent is that the valuation should have been based on three years audit, instead of one year. In this regard it is pertinent to note that Parties clearly had agreed for audit of one financial year



2014-2015 up to 31.03.2015. Accordingly consent order was passed for audit in respect of one financial year 2014-15. At this belated stage and after so much of exercise, the request of Respondent to reject the report of Valuer and to make audit for three years, *prime facie* is contrary to the consent order dated 13th August, 2015.

11. There is no dispute that as per joint request of both the parties the auditor was appointed to undertake the audit and valuation in question. Secondly, the parties were at *ad idem* for appointment of S.C. Vasudeva and Company. It is also pertinent to note that the consent order was passed more than one and half year before on 13.08.2015. In the meantime several exercises have been undertaken in order to achieve a global settlement between the two groups of companies. The expert finding clearly shows that huge dues towards corporate loan are outstanding from respondent (Bhatia) group of companies to Petitioner (Kaul) group of companies. The relevant corporate loans as shown in the audit report have not been specifically disputed. Petitioner claims that after adjustment of dues towards corporate loan and respective share valuation as assessed in the report, an amount of Rupees 5.87 crores is payable from Bhatia group to Kaul group. Respondents dispute the share valuation of the expert and submit that after adjustment with proper share valuation, the balance payable dues will be much lesser than the aforesaid amount of Rupees 5.87 crores. No doubt respondent has a right to challenge the final report of the auditor, but





simultaneously it cannot be ignored that with passage of time respondents will continue to enjoy the fruit of corporate loan amount, which they would have otherwise repaid back to the petitioner group. Till adjudication of the objection to the valuation report, petitioner has to wait for the corporate loan dues outstanding in their favour. In order to protect the interest of the petitioner, tribunal can pass conditional order as it thinks fit to meet the end of justice.

12. Needless to say that once the respondents are permitted to file their objection against the valuation reports, it will further prolong litigation causing delay in the global settlement as well as shall cause prejudice to the Petitioner, who are entitled to receive huge amount on account of corporate loans given to entities of Respondents group. While granting leave to the respondents to file objection to the final valuation report, tribunal may impose a reasonable condition on respondent to pay a portion of the outstanding corporate loan payable to petitioner Kaul group. Admittedly Bhatia group companies have taken corporate loan from Kaul group companies and are liable to repay the debts. The fact remains that there has already been delay and with the objection to the final valuation report there might be further delay in the proceedings. In such circumstances, in order to ascertain the bonafide of the respondent and also to mitigate hardship to the petitioner, certain reasonable terms can be imposed

13. In the facts and circumstances the Respondents are given liberty to file objection to the valuation report subject to payment of Rupees One Crore to

RA



Kaul Group as part repayment of inter-corporate loan, which shall be duly appropriated at the time of final global settlement.

14. As a sequel to the above discussion the following directions are passed:

1) Respondent Bhatia group is directed to pay a sum of Rupees One Crore to Kaul Group towards part repayment of inter-corporate loan within 30 days hereof, subject to the further direction of this tribunal.

2) Respondents shall file objection to the valuation report within 7 days thereafter with advance copy to petitioners.

3) Petitioners shall file reply to the objection within 7 days thereafter.

4) The next date of hearing is fixed on 15.05.2017 for deliberation and final decision on the report of Auditor and valuer M/s S.C. Vasudeva and Co., Chartered Accountants dated 8th February, 2017.

Pronounced in open court on 24.03.2017.

24.03.2017

SD/-

(CHIEF JUSTICE M.M. KUMAR)

PRESIDENT

SD/-

(S.K.MOHAPATRA)

MEMBER(T)