

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,
MUMBAI

Company Application No. 82/397-398/NCLT/MB/MAH/2016

In

Company Petition No.85/2012

CORAM:

Present: SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 397 & 398 of the Companies Act, 1956.

BETWEEN

Mr. Jayanand Salgaonkar

... Petitioner

Versus

M/s. Sumangal Press Pvt. Ltd. & 3 Ors.

... Respondents

ORDER

Reserved on 24th October, 2016
Order pronounced on 26th October, 2016

1. This Application has been filed on 30th September, 2016 by the Petitioner of Company Petition No.85/2012. The main grievance, which is addressed, is in respect of purchase of two vehicles, stated to be Mercedes Benz cars in the name of Respondent Nos. 3 and 4 i.e. Mr. Jayraj Salgaonkar and Mr. Jayendra Salgaonkar – both directors of Respondent No.1 Company. The other prayer i.e. an earlier date of hearing and restraint Order in respect of the assets of the Respondent Company have not been pressed for adjudication.
2. From the side of the Applicant, Ld. Advocate Mr. Harshawardhan Salgaonkar has pleaded that in addition to mismanagement of the Company, Respondent Nos. 3 & 4 directors have now two luxury cars in their own names. For the purpose of purchase of these two cars, a loan from Daimlar Financial Services India amounting to Rs.83,83,190/- has been taken by Respondent No.1 Company i.e. M/s. Sumangal Press Pvt. Ltd; duly reflected in the balance sheet drawn as on 31st March, 2016. Ld. Counsel has also demonstrated that these two cars have been purchased in the names of the said two Directors of the Respondent No.1 Company and not in the name of the Company. Ld. Counsel has pointed out that in the Reply to this Application, the *MKS*

Respondents have admitted that the cars were purchased but for the business use and the Respondent No.1 Company is the owner having beneficial rights and interest on the said two cars. He has pointed out that the undisputed fact is that the cars were purchased in the names of the Respondent Nos. 2 & 3 Directors of the Respondent No.1 Company. When the AGM was held on 16th September, 2016, the Applicant i.e. Mr. Jayanand Salgaonkar has raised an objection in respect of the correctness of the accounts, but that was rejected and a resolution was passed having majority. He has further informed that on the bills and tax invoices of the cars the personal addresses of the Directors have been noted, which means that the cars were not only in the names of those Directors but also having control as well as ownership on those cars. Finally, the Ld. Counsel has made a prayer that since the Company is burdened with the repayment of loan with interest, the payment of instalments to Daimlar Financial Services India should be directed to be stopped immediately.

3. From the side of the Respondents, it is pleaded that although it is an admitted position that the cars in question were purchased in the names of Respondent Nos. 3 and 4 Directors, however, the only reason for doing so was to save the registration tax. He has informed that the cars if registered in the name of the Respondent No.1 Company, then there is higher incidence of tax than the rate of tax on individuals. The Ld. Counsel has further explained that the purchase was duly made from the accounts of the Respondent No.1 Company. Therefore, these two cars were shown as the business asset of the Company. Even depreciation is also claimed on these two cars. The cars are the property of the Company and the name of the Directors was merely with the intention to save the vehicle tax on registration of vehicles.
- 3.1. In support of his argument that the cars are the property of the Respondent No.1 Company and that the depreciation was allowed, Ld. Counsel has cited few Orders of the Income Tax Appellate Tribunal's several Benches wherein the question of depreciation on such type of vehicles have been decided in favour of the Company. The list of the Orders cited are as under:
- i) 2015 SCC OnLine ITAT 9
In the Case of Aflon Alplast Pvt. Ltd., City Mill Compound, Kankaria Road, Kankaria, Ahmedabad 380 022 V/s. Income Tax Officer, Ward 1(1), Ahmedabad.
 - ii) In the Income Tax Appellate Tribunal, "A" Bench, Ahmedabad
In the Case of Endeavour Instruments Pvt. Ltd., 401 Mohini-II, Opp. Gandhigram Rly. Station, Near Sakar-1, Ellisbridge, Ahmedabad 380 006 V/s. The ITO, Ward-4(1), Ahmedabad.

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V/s. The ITO, Ward-4(1), Ahmedabad.
(I.T.A. No. 1067/Ahd/2013)

iii) 2011 SCC OnLine ITAT 9752 : [2011] ITAT 9098
In the Case of The Income Tax Officer, Ward-4(1), Ahmedabad V/s. Electro
Ferro Alloys Ltd., 208 Aditya Building, Near Mithakhali Six Road,
Ellisbridge,
Ahmedabad-6.

4. The question of admissibility of depreciation in the hands of the Company, when the cars were purchased in the names of the Directors has been dealt with by Income Tax Appellate Tribunal Benches in a number of decisions, as cited supra.
5. Having heard the submissions of both the sides, the first legal issue which is required to be addressed is that in a situation when the funds of the Company have been used for purchase of motor cars and the Company has treated the cars as business assets in the books of accounts as well as claimed depreciation although the cars were purchased in the names of the Directors, the admitted legal position is that the ownership and the rights over the vehicles ought to vest with the Company. Therefore, the liability of payment of instalments to Daimlar Financial Services India is also the liability of the Company, which is not required to be disturbed. Interestingly, it is worth to mention that some of the Orders of the Income Tax Appellate Tribunal, as cited by the Ld. Counsel of the Respondents, are authored by the undersigned Judicial Member hence duly taken into account to be followed while disposing of this Application. MKS
6. In the light of the above discussion, considering the facts and the law involved, it is hereby held that there is no force in this Application. Hence, the prayer restraining the Respondent No.1 Company from paying the instalments is hereby rejected.
7. Company Application No. 82/397-398/NCLT/MB/MAH/2016 is dismissed. However, no Order as to cost.
8. C.P. No. 85/2012 is adjourned for hearing on 14th December, 2016.

Dated: 26.10.2016

sd/-

Shri M.K. Shrawat
Member (Judicial)