

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI

CA. No. 150 of 2016 in TCP No. 26 of 2014

Coram: M. K. SHRAWAT, MEMBER JUDICIAL

In the matter of Section 237, 397-398, 402, 403, 406 of the Companies Act, 1956.

And

Between

Mr. Shridhar Vasudeo Bedekar & Ors.

..... Applicants/Petitioners

Versus

M/s. V. P. Bedekar & Sons Pvt. Ltd. & Ors.

..... Respondents/Respondents

Applicants/ Petitioners

1. Mr. Shridhar Vasudeo Bedekar
2. Mr. Suhas Shridhar Bedekar
3. Mr. Sanjay Shridhar Bedekar

Respondents/ Respondents

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| 1. M/s. V. P. Bedekar & Sons Pvt. Ltd. | 6. M/s. V. D. Khadilkar & Co. |
| 2. Mr. Vasant Vasudeo Bedekar | 7. Mr. Vasudeo Anant Bhide |
| 3. Mr. Atul Vasant Bedekar | 8. M/s. Bedekar Masalewale Pvt. Ltd. |
| 4. Mr. Ajit Vasant Bedekar | 9. M/s. Bedekar Pickles Pvt. Ltd. |
| 5. Mr. Mandar Trimbak Bedekar | |

Present on behalf of the parties:

1. Mr. Mahesh Athavale, PCS for the Petitioner.
2. Mr. Sameer Pandit, Ms. Madhupreeta Elango, Advocates for the Respondents.

ORDER

(Heard on 08.11.2016)

(Dismissed on 10.11.2016)

1. Ld. Counsel for the Petitioner and for the Respondents are present.
2. From the side of the Petitioner an Application bearing CA No. 150/2016 was filed on 27.10.2016 and mentioned today in the court. At the outset it has also been mentioned that vide an order of NCLT dated 21.09.2016 it was referred that another CA stated to be CA No. 190/2015 was to be heard along with the CP No. 26/2014. However, that CA No. 190/2015 already stood decided by an order of CLB New Delhi Bench dated 15.02.2016.
3. Pertaining to the issues raised in this Application, now under consideration; the main arguments revolved around the following prayers:

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"2. PRAYER: In the view of above it is humbly prayed that the Hon'ble Bench may be pleased:

- a. To direct investigation into the affairs of the respondent no.1 company under section 237 of Companies Act 1956*
- b. To direct the Respondents to grant free and fair inspection of books of accounts and other records of the respondent company till the date of filing this application*
- c. To direct the Respondents to provide copies of trail balance of the respondent company as at 30 September 2016 along with receipt and payment account and ledger extracts of related parties.*
- d. To pass such other orders as this Hon'ble Bench may deem fit."*

4. Ld. Counsel of the Applicant has referred an another order of CLB Mumbai Bench dated 10.04.2014 wherein vide para 4 the Respondents were directed to provide inspection of the statutory records of the Company to the Petitioner.

4.1 Ld. Counsel has further pleaded that the question of inspection of the records was never dealt with even when the litigation reached up to the stage of Hon'ble High Court as is evident vide orders dated 22.04.2016 and 06.10.2016.

4.2 According to Ld. Advocate, an offer was made to inspect the records. After inspection of records an affidavit was filed on 10.10.2016 along with a report of the Chartered Accountant. That report of the Chartered Accountant is very important because he has reported the siphoning of the funds amounting to Rs. 6 Crores found to be received on sale of two properties.

4.3 Ld. Counsel has also stated that even vide an order dated 13.10.2016 of Hon'ble High Court, the right of inspection of records were not disturbed. In the back ground of the above facts it is vehemently pleaded that the Respondents should again be directed to allow the inspection of the office record of R-1 Company, so that the wrong utilization of funds can be earmarked.

5. From the side of Respondent Ld. Counsel namely Mr. Sameer Pandit, has vehemently objected the prayer of granting of inspection mainly on the ground that the said prayer had already been made in the past and duly considered by several authorities hence, the Applicant has no right to again

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raise the same issue by filing application after applications. Even in CA No. 190/2015 such plea was made that the sale proceeds have not been utilized for the business purpose of the Company. However, Hon'ble chairman of CLB New Delhi, Bench has not granted any injunction as far as the impugned sale proceeds were concerned. However, directed to maintain its status quo with regards to fixed assets available on that date.

5.1 Ld. Counsel also pleaded that investigation of records as prescribed u/s. 213 of the Companies Act, 2013 is nothing but a substantial direction which can indeed be invoked by the Tribunal, but substantial order is required to be passed which cannot be decided through interim applications.

5.2 Further, Ld. Counsel of the Respondent has referred page 48 para 10 of the CP 26/2014 wherein as well the Petitioner has sought direction to grant inspection of the statutory records. According to him even after the lengthy litigation the investigation was not permitted. The Respondents on their part have already provided sufficient information and the statements of accounts which were duly inspected by the CA hence no further investigation is required as per law. Ld. Counsel has also raised a legal issue that Petitioner being a minority shareholder cannot interfere with the day to day affairs of the Company. Ld. Advocate has argued that even vide Section 136 of the Companies Act, 2013 a Share-holder has right only for the copies of the audited financial statement which have already been given to the Petitioner.

6. Heard both the sides at some length. The compilation and the connected provisions of the Act have been carefully perused. On due consideration I am of the view that this Application has no force in the eyes of law. The admitted factual position is that during the Appellant proceedings before the Hon'ble Bombay High Court in CA No. 641/2016 and other Application No. 18/2016 in Appeal No. 17/2016 the inspection of books of accounts was allowed by the R-1 Company. This fact is evident from the order of the Hon'ble High Court orders dated 06.10.2016 and 22.04.2016. Thereafter, an

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affidavit has been filed dated 10.10.2016. As a result, the first allegation of non-granting of inspection of the statutory financial statement is baseless. The Applicant is now trying to investigate in-depth the financial transaction of the Company by moving this Application. However, if consider this application in the light of the provision Section 136 of the Companies Act, 2013 then a copy of the financial statement including consolidated financial accounts along with Auditor's Report, which were laid before the General meeting; is required to be forwarded to every member of the Company. No more information is prescribed under this section to be supplied to the members. This section do not prescribe and do not give any right to a member to start a rowing inquiries. Even if we read this section along with Section 213 of the Companies Act, 2013 directions for investigation are permissible under certain specific circumstances. In my considered opinion; in a situation when a transaction has already been completed way back in the year 2015 the rowing enquiries at this stage are not justifiable. According to me there is one more reason for not granting in-depth investigation of the accounts of the R-1 because the issues of misappropriation of funds of the Company are yet to be decided in CP No. 26/2014 which is now listed for hearing on 15.11.2016.

7. It is hereby held that during this interregnum period any such direction should lead to lengthy litigation which is required to be avoided specially when the courts are flooded with litigation.
8. In the light of the above discussion and reasons assigned herein above, this Company Application is hereby dismissed.

Date:-
10th Nov 2016
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M. K. SHRAWAT
Member (Judicial)