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NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No.73/(MAH)/2016
CA No.

CORAM:

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

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 24.08.2016

NAME OF THE PARTIES: Mr. Sushil Dhurchand Bothra

V/s.

M/s. Arham Anmol Projects Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 397/398, 235 of the Companies Act
1956 and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
1	Mr. Peri Modi	Sr. Counsel	Petitioner Ans.
2	Mr. Vinay Chandra	Associate	
3	Mr. Jamb	Associate	
4	Mr. Navin Lunkari	Associate	
1	Mr. M. J. Bhatt	(Advocate)	Respondent no
	Mr. Sharen Jaghani	Advocate	Respondent no. 2
	1/b Adv. Rahul Gada		
	Mr. Zain Mookhi		Respondent No. 3
	a/w Shabbir Jariwala		
	1/b Dua Associates		

Order

Clarification Application C.A. 25/dated 28.06.2016

IN

C.P. No. 73/235, 397-398/CLB/MAH/2016

1. Ld counsel of the both the sides are present. An urgent mention has been made when the court assembled on 22/08/2016, therefore the matter is listed for hearing today.
2. On behalf of Mr. Vinod Malde (Respondent No.2 in CP-73) Ld. Advocate has drawn attention on "clarification application" dated 24/06/2016; wherein a reference in respect of an order of CLB New Delhi Bench dated 26/05/2016 has been made. Ld. Advocate is seeking clarification in two observation/direction made in the said order viz.,
 - (i) Petitioner has shareholding to the extent of 50% and
 - (ii) Mr Arun Katpalia counsel for respondent No.2 after obtaining instruction states that status quo with regard to the immovable assets shall be maintained.
3. On the first point the submission of Ld. Advocate of the Applicant is that in the reply to the CP it was categorically objected that the petitioner had not contributed his shares of investment when it was badly required by the company to meet out the Sales Tax Dept./Service Tax Dept. demand, however, the respondent No.2 and respondent No.3 had to contribute the capital therefore the shareholding had gone up to 63.669%. As a consequence, the shareholding of petitioner had gone down from 50 %. Ld Advocate has thus pleaded that it was wrongly noted in the said order that the petitioner has shareholding to the extent of 50%.
4. In response the Ld. Senior Advocate of Shri Sushil D Bothra (Petitioner in CP-73) has drawn my attention on Balance Sheet of the Company drawn as on 31/03/2013 wherein holding was shown as 37500 equity shares contributing 50% of the issued equity share capital.
5. On the second point the submission of the Ld. Counsel of the Applicant is that the undertaking given was only in respect of immovable asset/property of the company. It was not in respect of the property either in the name of Mr. Vinod Malde and others. He has pleaded that a clarification is urgently required that whether the status quo was only in respect of immovable property of the company or applicable to land/property belonging to director and their relatives. Ld Advocate has vehemently pleaded that taking the advantage of interim –stay-order of CLB dated 26/05/2016 the Petitioner made an application to the Registrar of Bhiwandi and the sub Registrar has notified properties described in Annexure 7 as 'lis pendens'. He has further pleaded that the properties belonging to the relatives could not fall within the ambit of CP under

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therefore deserves to be clarified that the status quo was only in respect of company's assets and not beyond that.

6. In response, the Ld. advocate has pleaded that no clarification is required because the order is not ambiguous and pronounced in the open court after due consideration of the facts of the case. Facts were that in the respect of the development projects it was agreed upon that the land would be purchased either in the name of company or in the name of directors or their associates. It is correct that a big parcel of land was purchased in the name of Mr Vinod Malde and his two brothers but it was for and behalf of the company having trust on them. Ld. Advocate has drawn attention on the main objection of the CP 73 claimed to be revolving around that very properties which are now notified as lis pendes. From the accounts of company Ld. Advocate had made an attempt to demonstrate that the funds of the company were diverted to acquire those lands as scheduled in Annexure 7 (Page 81 of CP)
7. Heard both sides at length. Case records carefully perused. Evidences annexed in the compilation are considered. Both the issues as raised in the 'clarification application' revolves around the factum of the case. However, it is hereby clarified, at the outset itself, that no part of this ad-interim decision shall have effect, in any manner, on CP 73 pending for adjudication. This decision pronounced for a limited purpose that whether a clarification indeed is legally or factually required in the impugned order dated 26/05/2016 by CLB Delhi bench.
8. In respect of the first issue pertaining to 50% shareholding of the petitioner as mention in the impugned order, my observation is that prima facie the said observation needs no clarification. Records of the case have revealed that the petitioner was holding the 50% shares (37500 equity shares) in the total shareholding of the company as on 31/03/2013. Although in the reply to CP in para 29 it is stated that the Respondent is having 63.669 % of issued shares. In any case, this observation appears to be a cursory reference to merely record that the petitioner being holder of 50% share thus moved the petition. Hence the impugned reference of shareholding cannot be reviewed at this juncture specially when the petition is yet to be decided. Under the facts and circumstances no interference is called for; otherwise also not legally permissible.
9. In respect of the order issued, prima facie it appears that the funds of the company have been utilised to acquire the property listed in schedule 7; unless and until proved otherwise at the time of finalisation of CP in question. The respected Coordinate Bench ought to have taken into consideration the clauses of the petition along with the account as well as the Annexure 7 (Page 81). In other words, the CP in question revolves around those very properties which are alleged to be bone of contention. Due to this reason, at the face of it, it was directed to maintain a status quo.

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Rather the direction also contains that if sales/purchase are required to take place then prior permission shall be obtained from the Board (Now NCLT) Undisputedly the said direction was nothing but in the nature of a temporary arrangement so that during the pendency of the CP irreparable loss may not happen. In other words, let the CP be decided in which the properties in question are the subject matter of the controversy. Meanwhile no clarification is needed which may otherwise tantamount to review of the said direction.

10. To conclude; no interference in the garb of clarification is hereby need in the order dated 26/05/2016 passed by CLB Bench, New Delhi.

sd/-

Shri M.K. Shrawat
Member (Judicial)

Dated: 24.08.2016