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COURT-I

(4)

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. No. 139 /2013

Present: Hon'ble Member (J) Ms. Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 07th September, 2016, 10.30 A.M

Name of the Company	Sunil Kumar Singh. -Versus- Pine Engicon Pvt. Ltd. & Ors.		
Under Section	397/398		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. Nirmonalya Dasgupta } for
2. Mohanlal Ojha } Respondents 07/9/16

ORDER

The Ld. Lawyer on behalf of the respondents is present.

No one is present on behalf of the petitioner. Even on the last date also, no one appeared on behalf of the petitioner to argue on CP as well as on CA No. 641/2013.

The Ld. Lawyer on behalf of the respondents placed his Company Application bearing CA No. 641/2013 which is filed with prayer, inter alia as follows :

- a) Order dated June 27, 2013 further modified by an order dated August 22, 2013 be vacated and/or recalled by this Hon'ble Board ;
- b) The bank account of the Company being Current Account No. 30835484477 maintained with the State Bank of India, Kankarbagh Branch, Bihar be liquidated ;
- c) The respondents be allowed to make payment to the creditors of the respondent Company from the bank account of the Company being Current Account No. 30835484477 maintained with the State Bank of India, Kankarbagh Branch, Bihar
- d) The company Petition being CP No. 139 of 2013 be dismissed ;

- e) Stay of operation of both the orders dated June 27, 2013 and August 22, 2013 and/or step or steps therein and /or there under until and unless the instant application is disposed ;
- f) Stay of all proceeding or proceedings and/or step or steps therein and /or there under arising out of the said Company petition being CO No. 139 of 2013 until and unless the instant application is disposed of.

Applicant Petitioners/Respondents submitted that in view of the order dated 27/06/2013 passed by the then Company Law Board, the Applicant Petitioners/Respondents are not in a position to operate the Bank Account, while there is no such order passed by the then CLB, either to freeze the account of the company and/or not allow the company to operate the same. Applicant Petitioners/Respondents further submitted that Petitioner (Non-Applicant herein) of CP No.139/2013 in the grab of the said order dated 27/06/2013 wrote letters to the State Bank of India, Kankarbagh Branch, Bihar, in which Applicant/Respondent No.2 and the Petitioner (Non-Applicant herein) were joint signatories, to freeze the said account of the company and not to make any payment in any manner whatsoever without prior approval and consent of the Petitioner/Non-Applicant and consequently the Bank (SBI) freezed the account of the company having Current Account No.30835484477 and did not allow any transaction by the Applicants/Respondents. Ld. Lawyer of the Applicants/Respondents submitted that on or around November 6th 2009 and November 9th 2009, the Respondent Company entered into two separate agreements with the Works Division, Mujaffarpur, Bihar to contract and/or execute improvement of N H (Gadar) Mujaffarpur Reva to Gidda Road and Mujaffarpur Reva Road Mungauli to Chakna, under Prodhan Mantri Gram Sadak Yojna (the details given in para No.9 of the CA 641/13) and after entering into the said agreement dated 6th November, 2009 and 9th November, 2009, have deposited performance security with State of Bihar.

In pursuant to such agreement entered and executed by and between the Respondent Company and the State of Bihar, the relevant construction and improvement works were immediately required to be initiated, which he/they have failed to do, due to the letters written by Petitioner/non-Applicant in the Bank in the grab of order dated 27/06/2013.

The Applicants/Respondents further submitted that the above said agreement dated 06/11/2009 and 09/11/2009 were made in presence of the Petitioner/Non-Applicant and as such, the Petitioner has also got proportionate share of the profit arising out of the said project.

That due to the freezing of account of the R-1 Company, the Applicants/Respondents are not allowed to operate the same, consequent upon which the R-1 company is unable to meet the expenses accrued and required for the completion of the said projects. In pursuance of such freezing of the Bank Account of the R-1 Company, no payment could be made to the contractors, who are engaged by the Respondents/Applicants, to complete the said project. The unpaid bills of the contractors are creating acute hardship to the contractors and the projects were also stopped due to paucity of funds. It is further submitted by the Applicants/Respondents that as per order dated 22/08/2013, passed by the then CLB, the Respondents/Applicants has submitted the forth-weekly Bank Statement of the Accounts of the R-1 company maintained with the SBI, Kankarbagh Branch, Bihar. The Applicants/Respondents have also annexed the copies of the agreement, copies of the unpaid bill of the contractors, a copy of the extract of the e-mail dated 03/02/2013 wherein the Petitioner/Non-Applicant has showed his unwillingness to continue as director of the said R-1 company, apart from all other documents annexed with the Company Application by the Applicants.

Perused the order dated 27/07/2013. The operating part of the order is/are:

- "3. After considering the above submissions of the Ld. Counsel of the petitioner, it appears that the petitioner has made out a prima facie case of oppression against the petitioner and therefore, ad interim order is hereby passed maintaining status quo as regards the share capital of R-1 company till the next date of hearing.
4. Since it being an ad interim ex parte order, the respondents are at liberty to mention over the said order passed today, if the facts are found otherwise.
5. The Petitioner is directed to serve a copy of this order, along with a copy of the petition with enclosures, upon the respondents forthwith and file affidavit of compliance."

In the above said order dated 27/07/2013, the Applicants are/were not restrained from operating the Bank Account of the R-1 Company maintained with the SBI, Kankarbagh Branch, Bihar. There is/are no as such order for freezing the Bank Account of the R-1 Company maintained with the SBI, Kankarbagh Branch, Bihar. Thus if under the grab of the said order, the Applicants/Respondents are not allowed to operate the Bank Account then it will cause immense hardship not only to the R-1 Company but to its investors also. More so, the Petitioner himself, by way of e-mail dated 3rd February, 2013 i.e. annexure 'F' (Page No.65) of Affidavit, clearly stated that he is not willing to carry out company business and would like to dissociate himself from company.

Heard the respondent/applicant at length on CA No. 641/2013. The very conduct of the Petitioner/Non-Applicant is doubtful. The Petitioner being one of the Director of the R-1 Company stands in fiduciary position towards the company and is bound to protect the interest of the company and investors which the Petitioner/Non-Applicant is totally failed and now by staying abroad trying to destabilize the company that by appointing some attorney holder to look after the case. For long it has been established rule of equity that director must not place himself in a position in which his personal interest conflicts with his duty towards the company.

If the Applicants/Respondents are not allowed to operate the Bank Account, the company will fail to perform its function and also, fail to pay the due share to its investors and directors. On perusal of the records, it appears that the Petitioner/Non-Applicant is the resident of California and is taking steps through his Attorney holder, that itself shows that he is no more interested in the company and trying to bring the R-1 company in a stand still position. If the R-1 Company is not allowed to operate the Account, it will otherwise amounting to the winding up of the company.

In view of the facts and circumstances, the CA No. 641/2013 is allowed and the order passed on 27-06-2013 and on 22-08-2013 stand dismissed along with the CP No. 139/2013.

In view of the dismissal of the CP No. 139/2013, the Bank (SBI, Kankarbagh branch, Bihar) is hereby directed to allow the respondents to operate the Current Account No. 30835484477 maintained with the Branch.

There is no order as to costs. Interim order, if any, passed earlier stands vacated.

MANORAMA KUMARI
MEMBER(J)