

**NATIONAL COMPANY LAW TRIBUNAL**  
**PRINCIPAL BENCH**  
**NEW DELHI**

C.P NO. 86(ND)/2016  
CA NO.133(PB)/2016

**CORAM:**

**PRESENT: SH.R.VARADHARAJAN**  
**Hon'ble Member (J)**

**SH .M. K. HANJURA**  
**Hon'ble Member (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 16.11.2016**

**NAME OF THE COMPANY:** Subhas Chand Manocha & Ors.  
Vs.  
M/s.Columbus Primier Shoes Pvt. Ltd. & ors.  
**SECTION OF THE COMPANIES ACT: 397/398**

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	TARANG , Advocate GUPTA		Respondents	
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2.	Ranjana Roy Samai, Adv		Petitioners	
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3.	Vasudha Sin, Adv			
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**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

C.A.No 133/PB/2016

In

C.P.No.86 (ND) 2016

In the matter of :

Subhash Chand Manocha &Ors

Petitioners

Versus

Columbus Premier Shoes Private Limited &Ors

Respondents

**Present on behalf of the Parties**

For Applicants:

1. Shri A.S.Chandhiok, Senior Advocate
2. Ms. Manmeet Kaur, Advocate
3. Shri Tarang Gupta, Advocate

For Non Applicants:

1. Shri U.K.Choudhary, Senior Advocate
2. Ms. Ranjana Roy Gawai, Advocate
3. Ms.Vasudha Sen, Advocate

**ORDER**

1.) The above application has been filed by the 1st respondent company in the main company petition, seeking in effect for modifications of the orders passed by this Tribunal on 06.06.2016. As per the averments made in the application, the filing of this application has been necessitated due to the fact that the orders passed by this Tribunal for maintaining status quo in relation to fixed assets limits from going ahead with their expansion plans for which they have already made considerable financial arrangements with Punjab & Sind Bank and with whom they have good financial relationship for the

past more than 10 years and from securing fresh as well as additional finance facilities already sought and for which formal sanctions having been obtained vide sanction letter dated 19.08.2016 as modified by 28.09.2016 in relation to the following facilities, namely:-

- a) Sanction of a fresh term loan of Rs.15 crores for Bahadurgarh Unit (this will be in lieu of existing non-housing loan of Rs.11 crores availed from PNB Housing).
- b) Sanction of fresh Cash Credit Limit of Rs.15 crores for Bahadurgarh Unit. ( to be used towards working capital).
- c) Renewal of existing Cash Credit Limit of Rs.6 crores for manufacturing unit being run by Respondent No.1 Company at Baddi.

2) For availing of the above financial facilities, it requires the mortgage of immovable and movable properties of the 1st respondent company. It is further represented that since the sanction has limited validity period expiring on 18.11.2016, there is an exigency in approaching this Tribunal for modifications of the order dated 06.06.2016, failing which the applicant -1st respondent company will be put to serious hardship. The applicant company further avers that the entire finance facilities as detailed above and sought to be availed from Punjab & Sind Bank are proposed to be used for funding the activities of the 1st respondent company and more precisely in the following manner:

S.No. Facility to be availed	Purpose
1 Fresh term loan of Rs.15 Crores for Bahadurgarh Unit	<ol style="list-style-type: none"> <li>a. For replacing loan of Rs.11 Crores sanctioned by PNB Housing.</li> <li>b. Additional loan of Rs.4 Crores for reimbursing its creditors from whom capital goods such as machineries have been procured and meeting other project cost such as purchase of generators, setting up of office, furniture, computer, fixtures etc.</li> </ol>
2. Fresh Cash Credit Limit of Rs.15 Crores For Bahadurgarh Unit	For purpose of meeting the Company's working capital requirements at Bahadurgarh Unit.
3. Renewal of existing Cash Credit Limit of Rs.6 crores for Baddi Unit.	For purpose of meeting the Company's working capital requirements at the Unit.

3) It is further represented that the process of sourcing for financing the expansion of the manufacturing facilities of the 1st respondent company has been going on for a considerable time and that through Promoters contribution, internal accruals and unsecured loans from friends and relatives, already an



investment in a sum of Rs.18.53 crores for the expansions had been sourced and that the balance cost of the project is required to be raised by way of debt as the total project cost of expansion is Rs.39.41 crores.

4) The application filed by the applicant-1st respondent is vehemently resisted by the petitioners-non-applicants holding 28.73% and the thrust of objections raised by the non-applicant-petitioners predominantly are fivefold:-

a) That the financials of the applicant-1st respondent company is sound as evidenced from the last audited financial statements for the year ended 31.03.2016 what with the applicant company having huge reserves and surplus and that there is no need for the applicant to look for borrowed funds, if even the expansion of the undertakings is genuine and that the same can be funded by the applicant company from its own resources and internal accruals;

b) That the entire plans of expansion as portrayed before this Tribunal is only a fait accompli to marginalise the shareholding of the petitioners in value by creating encumbrances over the assets of the company and subsequently in numbers as the sanction letters denotes further issue of capital and further also making the group companies in which the petitioners have shareholding offer corporate guarantees, totally unwarranted;

c) That under the guise of expansion, the respondents in the main company petition are seeking to encumber the personal assets of the petitioners which are held in common and that the petitioners will be seriously prejudiced from such an exercise;

d) That the respondents in the main company petition in guise of this application are virtually seeking their actions to be condoned as the sanction letters denote the pledge of shares including those shares allotted to the 10th respondent which are under challenge in the main petition and further by seeking the personal guarantee of some of the respondents whose appointments per-se as additional directors are under challenge in the main company petition the same is sought to be regularized;

e) Since the Baddi unit is not in operation, funding is not required for the same which in itself clearly establishes the motives of the applicant company

5) Before going into the merits of the application and the objections raised by the respondents it will be in order to succinctly narrate the background of the case for the limited purpose of disposal of the application and afterwards proceed to deal with the application per-se:





The applicant-1st respondent seems to have been incorporated in the year 1992 under the name and style of Premier Melamine Private Limited with the 2nd respondent in the main company petition being one of the subscribers to the Memorandum of Association of the company along with two other persons, basically outsiders. In the year 2005, the petitioners and respondents seem to have got fully involved in the affairs of the applicant-1st respondent what with the 4th petitioner and the 2nd respondent being appointed as directors in the applicant company to manage its affairs. Apart from the applicant company, the Manocha family comprising of the petitioner group and respondent group, it is contended by the non-applicants-petitioners are also in control of other companies and entities as well having almost equal shareholdings. Things being so, because of the overbearing attitude of the 2nd respondent and his group of shareholders, who are basically having a majority and control over the management and affairs of the applicant company, towards the petitioners they feel threatened and marginalised and despite being in the Board, the 4th petitioner has been consistently denied access to books of accounts and records even though specifically demanded in writing and notices of the board meeting have not been issued and that the petitioners have been muscled out of attending the Annual General Meetings. Further, the non-applicant petitioners contend that the respondents have unilaterally increased the authorised and paid up capital of the applicant company and have sought to encumber the properties of the applicant company under the guise of expansion and as collateral for additional finance sought to be raised by way of bank borrowings. Based on these and other allegations about the attempt of the respondents in the main company petition to reconstitute the Board by appointing additional directors and threat of illegal removal of the 4th petitioner, the non-applicants petitioners have approached this Tribunal with the main company petition, in which this Tribunal had from time to time issued directions in the interest of justice, one such order being status quo order passed by the Tribunal on 06.06.2016 in relation to immovable properties of which the applicant company is seeking modification as follows:-

a. Allow the present application and grant leave to the Respondent No.1 company to create a mortgage in respect to Plot No.323 in HSIIDC Industrial Estate, Footwear Park, Sector 17, Bahadurgarh, Haryana in favour of Punjab and Sind Bank in terms of Sanction letters dated 19.08.2016 and 28.09.2016 and issue directions to this effect;

b. Allow the present application and grant leave to the Respondent No.1 company to transfer mortgage in respect to Plot No.323 in HSIIDC Industrial Estate, Footwear Park, Sector 17, Bahadurgarh, Haryana from PNB Housing Finance Limited to Punjab and Sind Bank in terms of sanction letters dated 19.08.2016 and 28.09.2016 and issue directions to this effect; and/or

c. Pass any such other order(s) as this Hon'ble Tribunal may deem fit, fair and just in the facts and circumstances of the case.

6) A detailed reply has been filed by the non-applicants and the grounds of opposition to the application have been extracted supra in brief. The applicant has not chosen to file any rejoinder to the same. At



the time of oral arguments the applicant-1st respondent company through its learned senior counsel sought to file a compilation of documents for the immediate reference of the Tribunal which was opposed by the learned senior counsel for the non-applicant petitioners claiming that documents which are not part of the record are sought to be included at the time of arguments without putting the non-applicant petitioners on notice. However the learned senior counsel for the applicant assured the Tribunal as well as the other side that only documents forming part of the records filed by the parties have been compiled for easy reference for the purpose of application and in any case, the non-applicants are privy to the same. We take the statements made by the Learned Senior Counsel at face value and proceed to dispose of the application on hand.

7) In response to the five fold objections raised by the non-applicants/petitioners, the Learned senior counsel for the applicant submits that the very fact that the company is having huge reserves demonstrates that the company is a running company. The applicant company has been making profits year after year. However the reflection of a huge sum of the head "Reserves and Surplus" does not mean that the amounts are readily available for funding the expansion project as they stand fully invested which is evident prima facie from the balance sheet produced by the non-applicant filed along with the reply wherein the cash and cash equivalents for the year ended 31.03.2016 stands at only Rs.93, 235/- clearly demonstrating that the applicant company does not have any surplus cash.

8) Learned senior counsel further submits that the expansion plans have been in the offing even prior to the filing of the company petition which is evident from the Copy of the regular letter of allotment as well as the subsequent Zoning plan dated 22.07.2013 and 28.07.2015 which also demonstrates the necessity of completing the expansion plans of the applicant company in a time bound manner. However because of the attitude of the petitioners-non-applicant the expansion plans at a crucial stage came to a standstill, what with letters being sent to bankers by the non-applicants which forced the bankers to put on hold the entire finance arrangements agreed to by them after much effort and which action also forced the applicant company to look for funding from other sources desperately which made them borrow a sum of Rs.11 crores from PNB Housing by way of non-housing loan even prior to the orders of this Tribunal of 06.06.2016 by mortgaging the properties. The petitioners are fully aware of the above position and it is the action of the petitioners in pressurizing the bank as well as the filing of the petition is a fait accompli to somehow extract an exacting price for their exit. It is further submitted by the learned senior counsel for the applicant company that the apprehension of increase in share capital is unfounded and in any case the same can be made only with the consent of the board of which the 4th petitioner is a part and that the detailed project report submitted by the applicant company has been approved by the Bankers after thorough scrutiny and hence this Tribunal should not interfere with the financial decisions of the applicant company taking into consideration the business prospects and in the interest of the applicant company.

9) Learned senior counsel for the applicant company further submits that since all the available resources of the promoters have been utilized, the applicant company has to necessarily look for outside source of funding and since the amounts being huge necessarily it has to offer collateral securities of the immovable and movable properties by way of mortgage/hypothecation and it cannot



be contended that the properties are being encumbered for devaluing the share value of the applicant company. It is further contended that the petitioners are having a narrow view whereas the majority is considering in the larger interest of the applicant company. Further it is submitted that already the immovable and movable properties have been offered as securities, save the Plot bearing No.323 in HSIIDC Industrial Estate, Footwear Park, Sector 17, Bahadurgarh, Haryana and in view of the combined zoning plan and development of all the three plots adjacent to each other the lenders are insistent on the same being offered as collaterals.

10) In relation to the pledge of shares of the applicant by the respective shareholders, Learned Senior Counsel for the applicant submits that even though the original sanction letter dated 19.08.2016 had specifically mentioned the percentage of 79.01% of the shareholding leaving aside the shareholding of the petitioners, later in view of the objections of the petitioners/non-applicants, the applicant company had renegotiated with the Bankers and as per the revised terms of sanction dated 29.09.2016 the shareholding required to be pledged has been reduced and the shareholding of the BrijManocha group (respondents group in the main company petition) of 59.01% alone is sought to be pledged for availing the finance facility. In relation to the personal guarantees of the Directors, the Learned Senior Counsel submits that already in terms of the sanction letter dated 19.08.2016 and as per the revised list of personal guarantees to be given, the name of the 4th petitioner has been omitted and substituted with the 6th respondent in the main company petition. It is further contended on behalf of the applicant company that, even assuming but without admitting in the worst case of scenario of the directorship of some of the respondents being disputed is held as invalid, that does not preclude them from offering sureties in respect of any loan of their choice, leave alone that of the applicant company.

11) In relation to the non-operation of the Baddi unit and for which a sum of Rs.6 crores is sought to be availed the learned senior counsel for the applicant submits that the Baddi unit of the applicant company is operating as evidenced by the Central Excise records and hence there is no merit in the contention of the non-applicants in relation to the same and taking into consideration all the above, on behalf of the applicant company , it was submitted that In the best interest of the company and its shareholders the application should be allowed.

12) Per contra, while reiterating the fivefold stance of the non-applicants as given in paragraph supra, the Learned Senior Counsel for the non-applicant sought to highlight the conduct of the respondents in complying with the orders of this Tribunal made on 06.06.2016 more in breach than of compliance which is evident from the manner in which they have managed to raise a sum of Rs.11 crores from PNB Housing by offering the immovable properties of the applicant company at short notice just prior to the date of the status quo order and also the monthly statement of accounts which had been directed to be filed as per order dated 06.06.2016 has not been filed. Further the Learned Senior Counsel for the non-applicant also expressed the apprehension that under the guise of expansion plans the personal interest of the petitioners is being seriously compromised in as much the personal guarantee given by the 4th petitioner still stands and by virtue of personal guarantees sought to be given the personal properties held in joint names by the families are sought to be compromised. However, it is assured by the Learned Senior Counsel for the applicant that every step will be taken to relieve the 4th petitioner from



the personal guarantee offered by her and that the personal properties of the petitioners group will not under any circumstances in relation to the applicant company will be put in jeopardy. It is further contended by the Learned Senior Counsel for the non-applicants that the expansion plans are amiss particularly where the sales and production, as well as profits, have dropped on a comparative analysis of the profit and loss statement of the applicant company for the year 2015 and 2016 and hence there is no justification for expansion. Further, even a comparison of chartered accountants certificate for the amount spent in relation to expansion plans is inconsistent and contradictory.

13) We have carefully considered the rival submissions and at the outset, we clarify that the outcome of the present application will not have any material bearing on the merits of the main company petition. While on the one hand the respondents group holding majority in the applicant company contends that the expansion plans are imperative for the continuous growth of the company and hence the funding is vitally required on the other hand it is contended by the non-applicant petitioners group holding minority interest that the expansion plans are only a devious means to sideline them from the affairs of the company as well as over a time reduce the value of shares by incurring unnecessary liabilities. From the records produced by the parties, it is seen that the applicant company is virtually racing against time not only in relation to the utilization of plots allotted to it by Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) but also in respect of the financial facilities sought to be availed by the applicant company. Any delay in the full implementation of the project, including the expansion plans are likely to prejudice the applicant company irretrievably. The infighting between two groups of shareholders this Tribunal is of the considered view, should not affect the business or due implementation of the project including any expansion plans as it would be detrimental not only to the interest of the company but also to the shareholders. It is seen from the letter of allotment as well as correspondence dated 28.07.2015 from HSIIDC that the applicant company is required to implement the project within the stipulated period failing which it has to face the consequences as envisaged in the terms and conditions contained in the letter of allotment which obviously is prejudicial to the applicant company. Hence we are persuaded by the arguments of the Learned Senior Counsel for the applicant company that there is a bona fide exigency in entertaining the application and for the reliefs sought therein.

14) Further we are also in concurrence with the submissions of the applicant company that it is the exclusive prerogative of the Board of Directors of a company to take financial decisions which are best suited for the company taking into consideration the prevalent circumstances, including economical and it is not for the Tribunal to interfere in those decisions which are taken in the genuine interest of the company, unless prima facie it is established that such decisions are taken mala fide or lacks probity on the part of the majority. Leveraging the assets for the benefit of the company and the extent to which it is to be done is for the management of the company to take a call and it is not for this Tribunal to interfere in the said decisions. Mere disagreements on the part of a minority with the majority view about business decisions as to how the company should be run, cannot be considered as mala fide or lacking in probity on the part of the majority. It is seen from the records that the process of availing the financial facilities with the Bank has been going on for considerable time much prior to the filing of the main company petition by the non-applicants, which clearly demonstrates that it is not an afterthought on the part of the respondents solely made with a view to circumventing the order of this Tribunal or to



stifle the petitioners interest. On the other hand, there is a compulsion for the applicant company to act failing which the interest of all concerned will be seriously jeopardized as is evident as stated above. As rightly contended by the Learned Senior Counsel for the applicant, the first charge of the immovable properties is with HSIIDC and is already encumbered; and what is being offered now is only a second charge to Punjab and Sind Bank. Further even in respect of the other plots ( other than Plot No.323) already the same had been offered to PNB Housing for the amounts availed from it and what is now sought is only a sort of restructuring of the finance facilities from PNB Housing to Punjab and Sind Bank. There is some force in the said contention of the Learned Senior Counsel for the applicant. As is evident from the financial statements for the year ended 31.03.2016, the disclosure as to related parties to the company shows that these parties have been mutually extending corporate guarantees to each other. There is no room for much hue and cry about the same by the non-applicant petitioners. Further, we are also not impressed by the arguments of the non-applicants to the effect that there has been a slump in the sale and profits of the applicant company in the recent past and hence the expansion plans are not sustainable. Comparison of two years figures may not be a definitive indicator as highs and lows are usual in business cycles and cannot be made a ground to thwart the expansion plans, more particularly so, when there is an exigency to act. In the requirement of additional funds and principles of corporate democracy, we are led by the decisions made by the predecessor forum, namely CLB in SRIHARI RAO AND OTHERS VS GOPAL AUTOMOTIVE LTD AND OTHERS (1996) 96 CC 493 (CLB) the relevant paragraphs of which are extracted hereunder-

“In a case of allegation of misapplication or siphoning off of funds being made, unless and otherwise some details are given, it would not be possible to examine these allegations especially when the accounts of the company have been audited by a chartered accountant without any adverse comments. In any company, ups and downs over a period of time is a normal phenomenon. Even in respect of the respondent-company, we find from the annual report for 1996-97, that the operating profit has gone up from 67.8 lakhs in 1995-96 to 98.76 lakhs in 1996-97. The turnover has also been shown to have gone up from 21.7 crores in 1995-96 to 29.9 crores in 1996-97. While we do appreciate that the petitioners, not being in the management would not be in a position to furnish full particulars relating to alleged siphoning off of funds through fictitious vouchers, yet at least some concrete details/proof should have been furnished for us to examine the allegations in detail. In the absence of even an iota of evidence, purely on the basis of comparing the figures of income/expenditure between two years, we cannot come to a conclusion that such differences reflect siphoning off of funds. “

“With regard to the allegation relating to inadequate dividend and appointment of the managing director, we feel that, when the general body of members, in their own wisdom, have approved the decision taken by the board in these matters, we should not intervene, as in a corporate democracy, it is the will of the shareholders which has to prevail, the exception being that the shareholders are not misled with ulterior motive. The petitioners have not been able to substantiate any mala fide intention either in reducing the rate of dividend or in the resignation and appointment of the managing director other than what they have stated in the petition, from which we do not find sufficient ground to interfere in these matters.”



“From the pleadings, we find that the petitioners are only questioning the need for additional funds which we have already held that the company was justified in raising additional funds. If the complaint of the petitioners is that they have been made to subscribe to the shares, even though they have no confidence in the company, we are afraid that such complaint cannot be entertained to restrain a company from raising additional share capital as no minority shareholder can, just because he does not want to subscribe to the shares, demand restraining the company from issuing further shares. However, we find that the petitioners have already subscribed to the shares as also every other shareholder. Accordingly, we do not find any justification in acceding to the prayer of the petitioners in this regard. Accordingly, our restraint order dated March 14, 1997, stands vacated with immediate effect.”

15) Even though the above-cited decision relates to raising of additional share capital challenged by the minority we find that the observations quite apposite to the instant case. It is also pertinent to note that when this Tribunal enquired whether the non-applicants were willing to plough the necessary resources for expansion, the non-applicants were not prepared for such a course. The applicant company as already stated through its counsel however has assured that the personal guarantee of the 4th petitioner will be suitably substituted at the earliest and that the personal properties jointly held will not be reflected in the list of properties nor will be offered as security and that, in any event of increase in share capital at a future date, they will follow all the necessary incidence of law to the said effect.

Before parting we should observe that there is some merit in the contention of the non – applicants/ petitioners that the applicant company has failed to submit the monthly statement of accounts neither before this Tribunal nor to the petitioners /non applicants as directed vide order dated 06.06.2016. Further, there is also some merit in the contention of the non-applicants as to the manner of utilization of the huge amount raised from PNB Housing by way of the non-housing loan of Rs.11 crores by the applicant company.

Taking into consideration all the above and in the interest of justice we order as follows:

- i) that the instant application is partially allowed to the limited extent of the reliefs being sought therein in modification of the order dated 06.06.2016 with the other directions of the said order dated 06.06.2016 remaining intact; and subject to following exceptions:-
  - a) that the shares which are in dispute and being a subject matter in the main company petition shall not be pledged in relation to the financial facilities sought to be availed from Punjab and Sind Bank vide sanction letters dated 19.08.2016 and 28.09.2016;
  - b) the applicant company is further directed to relieve the 4th petitioner from personal guarantee within 4 weeks, if not already done and also not to encumber the personal properties of the petitioners held in joint names along with the respondents in the main company petition.
- ii) In addition, the applicant company is directed to file a detailed statement of the manner of utilisation of the amounts specifically availed from PNB Housing along with all relevant particulars within



a period of one week from this day to this Tribunal and also furnish a copy of the same to the non-applicants/petitioners

No order as to costs. Call the main C.P on -----20.12.2016 .-----

SD L

(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT

SD L

(R.V. RADHARAJAN)  
MEMBER(JUDICIAL)

(Umesh Dutt Mehta)  
16.11.2016