(2022) 03 NCLT CK 0074

In the National Company Law Tribunal

Case No : CA Nos.135/2021 & 19/2022 In CP No.41/Chd/Pb/2021

?Manoj Kumar Chodha APPELLANT

Vs

Hira Lal Pabbi RESPONDENT

Date of Decision : 25-03-2022

Acts Referred:
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2022) 03 NCLT CK 0074

Hon'ble Judges : Harnam Singh Thakur, Member J;Subrata Kumar Dash, Member, T

Bench : Division Bench

Advocate : Anand Chhibbar, Vaibhav Sahni, Munisha Gandhi, Vaibhav Sharma

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

CA No.135/2021

1. In the present application, the applicant(s) pray, inter alia, for direction to the Respondent(s) to deposit Rs.75,00,000/- (Seventy Five Lakhs Rupees Only) into the Company towards their fifty per cent share of contribution for allotment of equity shares in terms with the Letter of Offer dated 18.07.2021; and to allow the Applicant(s) to raise further share capital of the company to meet its immediate requirements of working capital by way of issue of further shares either to themselves or to third parties, which may alter current shareholding pattern of company.

2. This Tribunal vide order dated 18.06.2021 in Caveat No.6/2021 in CP No.41/Chd/Pb/2021 directed as under:-

“In the circumstances, it is ordered that Board Meeting held on 17.05.2021 and 16.06.2021 and the decisions taken thereto are made subject to the result of the CP.”

The applicants have stated that in pursuance of the order dated 18.06.2021 in Caveat No.6/2021 in CP No.41/Chd/Pb/2021 of this Tribunal, the applicants had made allotment of 500,000 equity shares of Rs.10/- aggregating to Rs.50,00,000/- against the monies contributed by them to bring their shareholding at par with the respondents.

3. It is stated that respondents filed an interim application bearing Company Application No.91 of 2021 in CP No.41/Chd/Pb/2021 praying, inter alia, for maintenance of status quo in the Company. The same application was heard and in the interim order dated 14.07.2021, the following directions were issued:-

"The respondents are directed to maintain status quo with regard to 50-50 shareholding pattern as existing before the meeting of Board of Directors said to have been held today till further orders. Further, the respondent-company shall not alienate the properties of the company in any manner and shall not raise any loans without the prior approval of this Tribunal."

4. It is further stated that the Company has been receiving urgent notice from the Banks highlighting irregularity in their loan account. In this regard, the Bank letter dated 26.07.2021 is attached as Annexure-A/5 to the application. It is averred that to meet the working capital requirements of the Company, the applicant issued a Letter of Offer dated 18.07.2021 for the issue of further 15,00,000 equity shares of Rs.10/- each aggregating to Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh) only on right issue basis to its existing shareholders in equal proportion.

5. The applicants pointed out that the respondents have filed another application CA No.125/2021 challenging the contents of the notice dated 07.07.2021 including further issuance of shares. It is also stated that while the applicants have deposited 50% share of the total share application money as per the Offer Letter dated 18.07.2021, the respondents have failed to deposit its 50% share of Rs.75,00,000/- (Rupees Seventy Five Lakhs) for the issuance of further shares to their account and have challenged the same by filing an interim application. The applicants further pointed out that the respondents had filed appeals before the Hon'ble NCLAT, New Delhi against this Tribunal's order dated 18.06.2021 in Caveat No.6/2021 in CP No.41/Chd/Pb/2021 and order dated 14.07.2021 in CA No.91 of 2021 in CP No.41/Chd/Pb/2021 which have been withdrawn subsequently.

6. The respondents in their reply filed by Diary No.00963/1 dated 17.02.2022 have alleged mala fide intentions on the part of the applicants in removing the respondents from the directorship of the Company and in making efforts to reduce in some manner the shareholding of the respondents so that the applicants can pass whatever resolution that they please in the General Meeting of the shareholders. It is submitted that respondents are willing to invest money in the company provided they have adequate control over its operations, which is presently denied to them, despite their 50% shareholding. Till then, it is stated

that they would not make further investments.

7. It is also stated that the aforementioned Offer Letter dated 18.07.2021 was in violation of the order dated 14.07.2021 passed by this Tribunal.

8. We have heard the learned counsels for the applicants and respondents and carefully perused the relevant records.

9. In the course of the arguments, the applicants were directed to submit Management Certified Balance Sheets as on 31.12.2021 and related details. After perusing the financial statements filed vide Diary No.00963/4 dated 21.02.2022 we are of the view that there is a financial crunch in the company and there are prima facie requirements for infusion of finance to service the debt burden of the company. The statements also show borrowing of the company from one Mr. Arvinder Pal Sethi which is stated to be utilized for repayment of loans advanced by Punjab National Bank. The balance sheet as on 31.12.2021 filed by Diary No.00963/2 dated 15.02.2022 also indicates that the company has substantial revenue from its operations though presently, it is facing a liquidity crunch mainly to service its debt burden.

10. The applicants have inter alia prayed for passing an order allowing them to raise further share capital of the Company equally to meet its immediate working capital requirements and also to allow them to raise money by way of issue of further shares either to themselves or to third parties.

11. The issues before this Bench in this application are to consider whether there is a justification to allow the applicant to make further borrowings and also whether to allow the applicants to raise further share capital of the company by issuing shares to meet its immediate requirement of working capital.

12. Before going into the merits of the case, this Bench observes that the issues under consideration in this application are closely linked to the issues which are under the active considerations of this Bench in CA No.91/2021, CA No.125/2021, and in the main petition CP No.41/Chd/Pb/2021. The issues involved in the main petition relate to the lack of proper representation in the Board meetings by one group of shareholders, who are respondents in the present application and the alleged illegality in passing important resolutions involving the directorship of the same group of shareholders and in issuance of Rights Issue. In related CAs, apart from the aforementioned issues, the prayers include stalling the appointment of additional Director, the appointment of Administrators to manage the company in the short-run and to maintain the status quo with respect to the shareholding. In short, the governance process of the corporate itself has been challenged by one major group of equal shareholding, who are respondents in the present application.

13. From the foregoing discussion, it is clear that the issues are closely related and If the interim reliefs are granted then it would have direct bearing on the outcome of the Main Petition. As held in Union of India & Ors. v. Modiluft Ltd.,

(2013) 6 SCC 65 & Raja Khan v. Uttar Pradesh Sunni Central Waqf Board & Anr., (2011) SCC 741, if interim relief is same as that of permanent relief, then it is not permissible because no case would be left for adjudication at the time of the final hearing. In such a situation, the court shall not grant any interim relief unless the case is fully heard. Thus, reliefs sought in the present case are definitely hit by the ratio set out in the aforesaid cases.

14. A review of the shareholding structure is required for appreciating the issues involved in this case. As on 31.03 2021, the paid-up share capital of Rs.12,50,00,000/- (Rupees Twelve Crores and Fifty Lakh Only) of the Respondent No.1 Company is divided in the following manner and there has been no change thereafter:

Name of the

No. of Shares (@

Value of Shares

Shareholder

Re.10/- per share)

Hira Lal Pabbi

31,25,000

3,12,50,000/-

Shivani Pabbi

31,25,000

3,12,50,000/-

Manoj Kumar Chodha

31,25,000

3,12,50,000/-

Anil Kumar Chodha

31,25,000

3,12,50,000/-

15. Unfortunately, there are unresolved issues between the two groups running the company mainly relating to the appointment of Directors and effective control over the management of the company. The prime objectives of this Bench are to ensure the smooth running of the company so that its existing assets are utlised to the fullest, to protect the legitimate interests of both the groups of shareholders and those of the current employees. The raising of finance to meet the EMI requirements is only a short-term measure. While the applicants, who

are effectively in control of the company, have made efforts to arrange the short-term finance required to manage the short term requirements, the issues of Directorship and effective management by two groups, each holding 50% of shares, is still under the active consideration of this Bench.

16. In this context, this Bench is also conscious of its own order dated 14.07.2021 in Company Application No.91 of 2021 in CP No.41/Chd/Pb/2021, extracted in para 4 above, where directions were issued to maintain the status quo qua share holding pattern pending the disposal of the main petition. In the course of the present proceedings, no case was made out by the applicants to justify the Letter of Offer dated 18.07.2921 for issuance of shares, especially in the face of this Tribunal's order dated 14.07.2021 to maintain the status quo. The resolutions passed in the Board meeting dated 14.07. 2021 for the issuance of these very shares are themselves pending adjudication in the CA No.125/21. In view of these facts, we hold that no direction need be issued to the respondents to deposit Rs75,00,000/- towards their alleged share of contribution for allotment of equity shares in terms of the said letter.

16. This Bench is of the view that whether a company is in genuine need of more capital or not, and the route to be adopted for meeting the financial requirements of the company, will be decided by the Board of Directors and it is incumbent on them to exercise their powers for the benefit of the company. It is noted that the Board of Directors has inherent powers, unless otherwise provided in the Articles, to increase the prescribed share capital as per the provisions of the Companies Act 2013. The issue of Directorship of this company, which will be decided in the main petition, is important as the same Directors have to decide on the need to increase capital by issuing further shares subject to the Articles of Association of the Company.

17. Any order at this juncture to allow the applicants to further raise their share capital by allotting shares is most likely to affect the existing shareholding pattern and will amount to prejudging the pending issues in the main application. The applicants' prayer to raise further share capital of the company by issuing shares to themselves or to third parties, therefore, is not acceded to.

In the light of discussion foregoing, CA No.135/2021 stands dismissed and disposed of.

CA No.19/2022

1. In the present application, the applicants pray to allow them to raise additional loans. As held in our order in respect of CA No.135/2021, the company is in need of infusion of finance for servicing debt. In view of this, we allow the applicants to raise additional loans for regularising the company's loan accounts with the Banks, subject to observations made in order passed above in CA No. 135/2021 qua Shareholding Pattern and Directorship.

2. Accordingly, CA No.19/2022 stands allowed and disposed of.

