(2020) 06 NCLT CK 0065

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : 72/241-242/PB Of 2020

Mukesh Sharma And Ors. — APPELLANT

Vs

Nandi Infatech Pvt. Ltd. And Ors. — RESPONDENT

Date of Decision : 15-06-2020

Acts Referred:
Companies Act, 2013 — Section 244

Citation : (2020) 06 NCLT CK 0065

Hon'ble Judges : B.S.V. Prakash Kumar, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Gaurav Mitra, Gurpreet Singh, P. Nagesh, Ashutosh Gupta

Judgement

1. It is a company petition mentioned by two of the shareholders namely Mr. Mukesh Kumar Sharma and another with 25% equity in R1 Company (Real Estate Company) by purchasing 2500 shares at Rs. 10 each share aggregating to Rs. 25,000 in the year 2013 stating that for R2-4 holding 75% shareholding, they unfairly issued notice for increase of authorized share capital from Rs. 10,01 Crore to Rs. 11.01 Crore, subsequent to the increase of authorised capital, the Respondents again on 05.06.2020 issued another notice after filing this company petition to raise paid up capital on issual of rights issue for two lac shares of Rs. 10 each, out of those two lac shares, the petitioners together are offered fifty thousand shares of Rs. 10 each on pro rata basis. If the petitioners do not subscribe to the same, the equity shareholding of the petitioners would ultimately dilute from 25% to decimally low. To which, the Respondents have not shown any palpable reason for increase of paid capital through rights issue. Considering it as oppressive and prejudicial against the petitioners having 25% shareholding in R1 Company, sought for stay over the notice dated 05.06.2020 to proceed with rights issue on 22.06.2020.

2. On perusal of the petition and hearing the petitioners and the Respondents

counsel arguments, it appears that these petitioners invested `25,000 in R1 Company against `75,000 invested by the Respondents in the year 2013, thereafter it appears that both the parties brought in money as a loan, from the petitioners side, they brought in ^`2,48,50,000 but whereas these petitioners had taken out this loan money in the year 2015-16 itself. Ever since the petitioners group has no seat in the Board. But on the contrary, the respondents from time to time investing money in the company through preference by notifying every proposal for investment to the petitioners, but whereas the petitioners have not invested any money even through preference at any time after they pulled out their loan money in the year 2015 -16. This preference of around `9.8Crore has come from the Respondents in the year 2015-16 & 2018-19, as against this, no investment has come from the petitioners' side ever since they have pulled out the loan money that was given to the company.

3. The petitioners' counsel has raised various allegations saying that R2-4 siphoned the company's money by giving interest free loans to various persons and thereafter paying out extra money to related parties. Answering it, the respondents' counsel has stated all these monies have been given to the suppliers, at some points of time, wherever extra money has gone to the suppliers that is shown as monies receivables to the company wherever less money has gone, there it has been shown as payables to the suppliers. Of course, both the sides have not agreed on this point. For because the petitioners saying these monies are not given to the suppliers/trade creditors, the respondents' side saying that all these transactions are in relation to discharging the functions of the company, we are of the view that it is a point for determination, therefore this Bench cannot say anything unless an affidavit comes from the respondents' side. If these alleged transactions are put against the business R1 Company doing in two to three hundred crores, it can't be at sight said as something siphoned from the company especially when it comes from the people who have only invested Rs. 25,000.

4. It appears that the respondents' side, by way of loan as well as by way of preference, already invested more than Rs. 10 Crore into the company, but the petitioners by just putting in Rs. 25,000 in the year 2013, which is only 0.02% of the total paid up capital, trying to stall the company from carrying its functions by filing this petition via number qualification u/s 244 of the Companies Act 2013.

5. When it comes to merit, prima facie as it appears on record, it is a real estate company governed by RERA and has been mandated to release possession of the flats on phase wise, unless money comes into the company, it will become difficult to complete the project and to get the remaining balance that is to come from the home buyers. As to this aspect, the respondents' counsel has categorically mentioned that unless this project is finished on time and possession is given on time to the respective home buyers, the company will not get the remaining payment that is around Rs. 69 Crore from the home buyers. To complete this project on time, the Respondents' Counsel says, it is required to

raise money. Therefore to show debt equity ratio to the creditor banker, it is necessary to raise equity to sustain and survive the company. For this reason alone, the company has issued notice to proceed with rights issue by not only notifying it to the petitioners but also by offering them to invest on pro rata basis.

6. It is a company run by the respondents with their money, the petitioners who invested only Rs. 25,000 cannot put spokes in the conduct of business in the name of showing this company has been created on partnership lines. To which also, the respondents' counsel has mentioned that this company was basically incorporated in the year 2011, thereafter the petitioners have invested `25,000 by taking 2,500 shares, and now the business of the company today is around Rs. 200 to Rs. 300Crore. It is all with money and management of the Respondents. If the petitioners are interested to maintain their equity ratio, it is open to them to invest, instead of trying to halt the functioning the company.

7. In view of the same, we have not found any unfairness prima facie to grant stay as sought by the petitioners, therefore it is made clear that the Respondents are free to proceed with rights issue and with a direction to the Respondents side to file reply within four weeks hereof, rejoinder if any by the petitioners within four weeks thereafter.

8. List this main company petition for main hearing on 20.08.2020 by cancelling the date 23.06.2020 earlier given.