

(2015) 07 BOM CK 0390

In the Bombay High Court

Case No : Company Application (L) No. 57 of 2015 in Company Appeal (L) No. 10 of 2015 in CLB Company Application No. 296 of 2014 in CLB Company Petition No. 13 of 2012

Supermax Personal Care P. Ltd.

APPELLANT

Vs

Vidyut Metallica P. Ltd. and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Citation : (2016) 130 CLA 152 : (2015) 193 CompCas 9 : (2016) 1 CompLJ 401

Hon'ble Judges : S.J. Kathawalla, J.

Bench : Single Bench

Advocate : Ravi Kadam, Senior Advocate, Ashish Kamat, Ankit Lohia, Ranjit Shetty, Krishnava Dutt, Aastha and Rohan Agrawal instructed by Argus Partners, for the Appellant; Aspi Chinoy, Mustafa Doctor Advocate Advocates, Rohan Dakshini, Shweta Jaydev and Prakhar Parekh instructed by Federal and Rashmikant, for the Respondent

Judgement

S.J. Kathawalla, J.—The above application is taken out by the applicant (original appellant)--Supermax Personal Care P. Ltd., in Company Appeal (L) No. 10 of 2015 filed in Company Application No. 296 of 2014 in Company Petition No. 13 of 2012 filed before the Company Law Board, Western Region Bench, Mumbai, hereinafter referred to as "the appellant" for the following reliefs:

"(a) This hon"ble court be pleased to grant a temporary injunction restraining respondents Nos. 1 and 2 from in any manner acting upon and/or implementing the impugned order dated February 2, 2015, including and qua the properties set but at exhibit "A" and/or seeking to gain ingress/egress and/or take possession of any property Which forms the subject matter of the impugned order including but not limited to the properties as set out at exhibit "A".

(b) This hon"ble court be pleased to grant a temporary injunction and/or otherwise issue an order and direction restraining the additional respondent from acting in furtherance of and/or implementing (in any manner whatsoever) the

impugned order dated February 2, 2015 and/or the letter dated July 9, 2015, addressed by the additional respondent."

The list of properties set out by the appellant in exhibit A to the above company application is reproduced hereunder:

"(1) Premises at Laxmi Co-operative Housing Society, Malhotra House, Begumpet, Hyderabad.

(2) Flat No. 905, 9th floor, Srinivas Towers, Hyderabad.

(3) Premises at IE/12, Jhandewalan Extn., New Delhi.

(4) Plot No. A-292, Road No. 16, Lane 2, Wagle Industrial Estate, Thane-400 604."

2. Four company petitions were filed by respondent No. 2--Mr. Rajinder Kumar Malhotra in respect of four different companies before the Company Law Board. The details in respect of the said company petitions are as under:

3. According to respondent No. 2, pursuant to the orders passed by this court, the hostile directors who are acting as nominees of Rakesh Malhotra (respondent No. 5 herein, and son of respondent No. 2) were removed. They, however, wrongfully attempted to obstruct the new management/directors from taking charge of the properties/plant/factory of the four companies. Accordingly, in the four company petitions four separate company applications were filed in respect of each of the aforesaid companies. The details of the said company applications are as under:

Annexed to each of the company application was a list of the properties owned by each of the said company in respect of which reliefs were being sought from the Company Law Board. Needless to add that the properties listed in the annexures to the respective company applications were different and not the same.

4. By Company Application No. 296 of 2014, taken out by respondent No. 2 herein qua the company--Vidyut Metallics P. Ltd., the following reliefs were, inter alia, sought from the Company Law Board:

"(b) To pass an order thereby restraining all the respondents, particularly respondents Nos. 2, 3 and 6 by themselves, their servants and agents from (i) using the online accounts of the company; (ii) entering into the properties belonging to the company listed in exhibit T1" annexed to the application; (iii) in any manner whatsoever dealing with and/or disposing of properties, movable or immovable, belonging to the company and/or operating any bank accounts of the company."

Exhibit T1 annexed to this application is reproduced hereunder:

5. The Company Law Board passed a common order dated February 2, 2015, allowing all four company applications, including Company Application No. 296 of

2014, and passed orders appointing a Commissioner to prepare an inventory and hand over charge of the factory premises/manufacturing units to the management of the company, particulars of which were set out in the respective applications as aforesaid. By a clarificatory order dated February 4, 2015, charge of other immovable properties of the companies was also allowed to be taken.

6. The appellant filed the present appeal, being Appeal (L) No. 10 of 2015, to challenge the aforesaid order dated February 2, 2015, only in respect of one of the four company applications, viz., Company Application No. 296 of 2014 in CLB Company Petition No. 13 of 2012 filed in regard to Vidyut Metallica P. Ltd.

7. The basis of the appeal is two fold, viz., that the order in Company Application No. 296 of 2014 regarding taking over possession of the properties of Vidyut Metallica P. Ltd., was illegal, as the appellant was allegedly in possession of Plant No. 2 of the same, and that the order was passed in the absence of the appellant being party to Company Application No. 296 of 2014. It is the case of respondents Nos. 1 and 2 that since the properties of the Vidyut Metallica P. Ltd., were not in possession of the appellant when Company Application No. 296 of 2014 was heard by the Company Law Board, the question of joining the appellant as the party respondent to the application did not arise and consequently the question of the appellant being deprived of natural justice also did not arise.

8. The advocate for the appellant has in the present application tried to contend that though the appellant has filed only one appeal, being Appeal (L) No. 10 of 2015, impugning the order passed only in one of Company Application No. 296 of 2014, the final order which would be passed by this court in Appeal (L) No. 10 of 2015 filed in the said application, would also apply to the orders passed by the Company Law Board in the other three company applications, i.e., 297, 298 and 299 of 2014. In view thereof, it is pertinent to note at this stage itself that the appellant has in Appeal (L) No. 10 of 2015 taken out Application (L) No. 6 of 2015 seeking interim reliefs only to the extent that the implementation and operation of the order dated February 2, 2015 passed by the Company Law Board in Company Application No. 296 of 2014 in Company Petition No. 13 of 2012 be stayed. In other words, the appellant having not filed any appeal against the order dated February 2, 2015, qua the other company applications being Nos. 297, 298 and, 299 of 2014, was aware that in order to seek a stay on the order dated February 2, 2015, passed by the Company Law Board in the said Company Applications Nos. 297, 298 and 299 of 2014, the appellant will have to file separate appeals impugning the orders passed in the remaining three company applications.

9. Accordingly, an application for urgent ad interim relief was made by the appellant before me in my Chamber on February 3, 2015, at 8.00 p.m. for stay of the order passed by the Company Law Board only in Application No. 296 of 2014 in Company Petition No. 13 of 2012. Obviously no relief was sought before me qua the properties forming subject matter of Company Applications Nos. 297,

298 and 299 of 2014 in regard to which no appeals were filed and no stay of the orders was sought. In view thereof, the following order was passed by this court on February 3, 2015:--

""Mentioned. Not on Board,

Heard the learned senior advocates appearing for the parties. In view of the statement made by me learned senior advocate appearing for the respondents that, without prejudice to the rights and contentions of the respondents, the respondents shall not take possession of the factory premises/manufacturing units until February 6, 2015, no urgent ad interim orders are passed and the above appeal is placed for ad interim reliefs on Thursday, February 5, 2015."

The said statement made by the learned senior advocate appearing for the respondents was continued by an order dated February 5, 2015 and was further continued from time to time. Again at no subsequent point of time it was submitted before me by the appellant and/or any assurance given to me by respondents Nos. 1 and 2 that the statement made by the respondents, and recorded in the order dated February 3, 2015, was/should/would be applicable to the properties forming subject matter of Company Applications Nos. 297, 298 and 299 of 2014, the orders applicable to which were not appealed against.

10. The above Appeal (L) No. 10 of 2015 filed against the order dated February 2, 2015, passed in Company Application No. 296 of 2014 (i.e., pertaining only to the properties of Vidyut Metallica P. Ltd.) was finally heard and the parties thereto filed their written submissions on May 6, 2015. The decision in that appeal is reserved for orders, and pending the said decision, the statement of the respondents recorded in Appeal (L) No. 10 of 2015 filed in Company Application No. 296 of 2014 pertaining to the properties of Vidyut Metallica P. Ltd., which are the subject matter of Company Application No. 296 of 2014 continues to be in operation. However, at the cost of repetition it is once again clarified that since no appeals have been filed pertaining to the properties forming subject matter of Company Applications Nos. 297, 298 and 299 of 2014, pertaining to the companies, viz., Supermax International P. Ltd., Unique Properties and Securities P.Ltd. and Transauto and Mechaid P. Ltd., respectively and no orders were at any point of time sought or passed by this court interfering with the order passed by the Company Law Board qua the said properties, the statement of the respondents recorded by this court was never applicable to any properties other than the properties of Vidyut Metallica P. Ltd., described in Company Application No. 296 of 2014.

11. However, it is submitted on behalf of respondents Nos. 1 and 2, that though the said respondents were anxious to forthwith implement the order passed by the Company Law Board, and after the order of the Company Law Board dated February 2, 2015, they did attempt to take possession of some of the properties, since the appellant filed an appeal impugning the order passed in Company Application No. 296 of 2014, thereby requiring the respondents to make a

statement that they will not take possession of the plant and machinery being subject matter of Company Application No. 296 of 2014, they did not proceed to take possession of the properties forming subject matter of Company Applications Nos. 297, 298 and 299 of 2014, until the appeal period in respect of the orders passed in all the company applications was over. This cannot be held to mean that the statement of the respondents recorded in the order dated February 3, 2015, of this court included the properties which are subject matter of Company Applications Nos. 297, 298 and 299 of 2014 or that there was any agreement/arrangement/assurance from respondents Nos. 1 and 2 to the appellant that they will not take possession of the properties forming subject matter of Company Applications Nos. 297, 298 and 299 of 2014, the orders in which were admittedly not appealed against.

12. Since the order pertaining to taking possession of the properties being subject matter of Company Applications Nos. 297, 298 and 299 of 2014 were not appealed against, the advocate for the respondents after the appeal period in respect of the same was over, by their letter dated June 29, 2015, addressed to Mr. Sunil Gangan, advocate appointed as Commissioner by the Company Law Board, requested him to take possession of the properties. Paragraphs 2 to 5 of the said letter are reproduced hereunder:

"2. As you are aware, by a common order dated February 2, 2015 (hereinafter the "said order", the hon"ble Company Law Board appointed you as the Commissioner to visit the premises along with our clients and, inter alia, take inventory of the companies" assets (movable/immovable) and hand over charge of the same to our clients the petitioners/applicants abovenamed and thereafter prepare the necessary compliance report. A copy of the said order dated February 2, 2015, is once again is enclosed as annexure 1 for your ready reference.

3. Pursuant thereto a clarification of the said order was also passed on February 4, 2015, which slightly modified the earlier order. A copy of the said order is enclosed as annexure 2.

4. However, as also informed to you one Supermax Personal Care P. Ltd. (a company controlled by Mr. Rakesh Malhotra, respondent No. 6 in the proceedings before the Company Law Board) had filed an appeal being Company Appeal (L) No. 10 of 2015 only against the said order passed in Company Application No. 296 of 2014 (filed in Company Petition No. 13 of 2012). The said company appeal has now been finally heard and is reserved for judgment. The order is awaited.

5. The order passed in Company Applications Nos. 297 of 2014, 298 of 2014 and 299 of 2014 (being (i) to (iii) above) have not been challenged and the limitation period for challenging the said order has also expired. In view of the aforesaid, you are requested to kindly fix an immediate appointment, inter alia, for handing over charge of the various properties/assets of the companies, as stated in the

order dated February 2, 2015, when the respondent or their representatives may remain present. A list of properties of which charge is required to be handed over to our clients/applicants in the captioned company applications above is enclosed herewith as annexure 3."

13. Pursuant thereto, the learned Commissioner by his letter dated June 30, 2015, fixed a preliminary meeting on July 2, 2015, at 5.00 p.m. for deciding the future course of action in the matter.

14. M/s. Argus Partners, the advocates for the respondents who had opposed grant of any reliefs before the Company Law Board in Company Applications Nos. 297, 298 and 299 of 2014, by their letter dated July 1, 2015, addressed to the learned Commissioner sought an adjournment of the meeting fixed, up to July 8, 2015, on the ground that they have forwarded the letters received by them dated June 29, 2015 and June 30, 2015, to their clients and are awaiting their instructions.

15. The request for an adjournment by M/s. Argus Partners was strongly opposed by the advocates for respondents Nos. 1 and 2 herein, wherein the said advocates, inter alia, specifically recorded that, "More than four months have elapsed since the passing of the order. In implementation of the orders of the Company Law Board, when admittedly there is no appeal filed nor any stay obtained, the question of parties having any further say to delay implementation of the orders does not arise".

16. M/s. Argus Partners by their letter dated July 1, 2015, addressed to the learned Commissioner once again insisted that the preliminary meeting be adjourned to any date after July 8, 2015, since they were to seek instructions from their clients in the matter.

17. On July 2, 2015, a meeting was held before the Commissioner which, at the request of M/s. Argus Partners was adjourned to July 8, 2015.

18. At the meeting held on July 8, 2015, M/s. Argus Partners handed over a copy of the share certificate in respect of property located at Empire Estate Co-operative Housing Society Ltd., issued in favour of Mr. Rakesh Malhotra. It was stated by the said advocates that possession of the said property cannot be taken since the property belonged to Mr. Rakesh Malhotra in his personal capacity. Further a request will made by the advocates to grant two weeks time to put in an affidavit/letter of the ex-directors to set out the status of the properties in question. The advocate for respondents Nos. 1 and 2 herein opposed the adjournment and requested the Commissioner to fix a schedule to take possession of the properties since there was no stay on the order passed by the Company Law Board. The learned advocate appearing for respondents Nos. 1 and 2 also submitted that the respondents had considerable amount of time to obtain a stay from the hon''ble court which they have not done till date, hence the order be enforced without any delay. The learned Commissioner thereafter granted two days" time to the respondents in Company Applications Nos. 297,

298 and 299 of 2014 to produce the original share certificates and to file affidavit/ letter ascertaining the status of all the properties listed in the letter of the advocates for the applicant. The Commissioner also fixed a tentative schedule commencing from July 17, 2015, for enforcing the order passed by the Company Law Board dated February 2, 2015.

19. The appellant has thereafter taken out the above company application in Company Appeal (L) No. 10 of 2015 for the abovementioned reliefs.

20. In the said application, the appellants have contended as under:

"(i) That respondents Nos. 1 and 2 herein have wrongfully instructed their advocates to apply to the Commissioner for implementation of the order dated February 2, 2015, passed by the Company Law Board and the same is a clear attempt to overreach the process of this court and breach the statements and assurances consistently made by senior counsel appearing on behalf of respondents Nos. 1 and 2 from time to time, that the order would not in any manner be implemented. Respondents Nos. 1 and 2 have therefore also breached the trust reposed by his court in not formally recording such statements and assurances. The appellant therefore by the above company application seeks enforcement of the statements and assurances made by the respondents' senior counsel and advocates (who were instructing them) and protection of the appellant's/applicant's possession of and entitlement of the assets and properties enlisted at exhibit A whilst the appeal remained reserved for judgment and thereafter depending on the outcome thereof.

(ii) That the statement made on February 3, 2015, by the learned senior advocate appearing for the respondents, that the respondents shall not take possession of the factory premises/manufacturing units, was made in light of the attempt by respondents Nos. 1 and 2 to also seize possession of Transauto, Peco and Panama Quarters premises.

(iii) That after February 4/5, 2015, no further attempts or steps were taken by respondents Nos. 1 and 2 to take possession of any of the properties, which clearly brings out their own understanding of their statement, viz., to encompass all properties covered by the common Company Law Board order."

21. In his oral submissions, Mr. Kadam, the learned senior advocate appearing for the appellant has to some extent tried to drift from the earlier stand of the appellant by submitting that the orders passed by this court dated February 3, 2015 and February 5, 2015 and the statement continued thereafter, no doubt pertain only to the properties being the subject matter of Company Application No. 296 of 2014. However it is the case of the appellant that the common order passed in all the applications, is passed without hearing the applicant. If the order in Company Application No. 296 of 2014 is set aside on that ground, the orders in all other company applications are also liable to be set aside and therefore the learned Commissioner should not take possession of the properties even in respect of other company applications in which no appeals have been

filed before this court. Mr. Kadam has also sought to argue that the questions of law raised in Company Application No. 296 of 2014 pertain to the entire order of the Company Law Board dated February 2, 2015 and therefore the applicant is entitled to protection even in respect of the properties which are the subject matter of other company applications in which appeals have not been preferred.

22. Mr. Aspi Chinoy, the learned senior advocate appearing for respondents Nos. 1 and 2 herein, has submitted that at no point of time counsel appearing for the appellant has made any submissions (oral or written) qua any of the properties which are the subject matter of Company Applications Nos. 297, 298 and 299 of 2014. All matters being fact specific, the applicant ought to have filed appeals in all company applications, if they wanted a stay qua the orders passed in Company Applications Nos. 297, 298 and 299 of 2014. It is submitted that if the memo of appeal is read as a whole, along with the application filed therewith seeking ad interim/interim reliefs and also the detailed written submissions filed by the appellant, it is clear beyond any doubt that the appellant has approached the court seeking redressal of their grievance only with regard to the order passed by the Company Law Board in Company Application No. 296 of 2014 and the properties covered therein. It is submitted that in the written submissions filed by the appellant in the above appeal, they have in detail alleged that the properties of Vidyut Metallica P. Ltd., more particularly its Plant No. 2 is in their possession. No submissions pointing out the alleged possession of the applicant in respect of the property being subject matter of Company Applications Nos. 297, 298 and 299 of 2014 are set out in any of the pleadings and/or written submissions. The matter being fact specific, even if the appellant succeeds in the above appeal which is confined to the order passed by the Company Law Board only in Company Application No. 296 of 2014, the order passed by the Company Law Board qua the properties which are subject matter of Company Applications Nos. 297, 298 and 299 of 2014 cannot automatically stand set aside in the absence of any appeals filed against the orders passed by the Company Law Board in Company Applications Nos. 297, 298 and 299 of 2014. Mr. Chinoy submitted that being fully conscious of this fact, the appellant came up with a novel story that there was throughout an understanding between the parties and assurance/understanding given by the respondents that they will not be taking possession of any of the properties pending the hearing and final disposal of the above appeal. Mr. Chinoy submits that such a statement, assurance/understanding is attributed to the senior advocate appearing for the respondents which allegation is not only absolutely false but unfortunate, given the standing of the learned advocates appearing on behalf of the appellant.

23. Mr. Chinoy has submitted that the allegation, that in view of the alleged understanding, the respondents for a long time did not move the learned Commissioner seeking compliance of the orders of the Company Law Board passed in Company Applications Nos. 297, 298 and 299 of 2014, is equally false and incorrect to the knowledge of the appellant. Mr. Chinoy submitted that the fact that there was no assurance/understanding as alleged, is clear from the fact

that in a series of correspondence entered into by and between the respective advocates and the Commissioner, in which the advocate for respondents Nos. 1 and 2 have repeatedly recorded that there is no order of stay obtained in Company Applications Nos. 297, 298 and 299 of 2014, the concerned advocates have at no stage recorded any such alleged assurance/understanding between the parties and/or their advocates.

24. Mr. Chinoy has submitted that the order of a court has to cover only the subject of the appeal. Therefore, even if the appeal is allowed, the order in so far as it permits taking over possession of the properties which are the subject matter of Company Application No. 296 of 2014 will only stand set aside, and not the subject matter of Company Applications Nos. 297, 298 and 299 of 2014 in which no appeal is preferred by the applicant.

25. Mr. Chinoy therefore submitted that the appellant is not entitled to any reliefs.

26. From the above facts it is clear that respondent No. 2--Mr. Rajinder Kumar Malhotra has filed four company petitions being Nos. 11, 12, 13 and 14 of 2012. The said petitions pertain to four different companies namely Transauto and Mechads P. Ltd., Unique Properties and Securities P. Ltd., Vidyut Metallica P. Ltd., and Supermax International P. Ltd., respectively. In the said company petitions, respondent No. 2 took out four Company Applications being Nos. 296, 297, 298 and 299 of 2014, inter alia, seeking possession of the properties belonging to the said four companies. Obviously, the properties belonging to the said four companies and forming subject matter of the four company applications are not the same. The Company Law Board by its order dated February 2, 2015, passed a common order in the above four company applications. By the said common order, an advocate of this court was appointed to prepare an inventory of the properties and to hand over the same to respondent No. 2. Since respondents Nos. 1 and 2 tried to immediately take possession of the said properties, the appellant, who was not a party to the said applications, filed Appeal (L) No. 10 of 2015 only from the order passed in Company Application No. 296 of 2014 concerning the properties of Vidyut Metallica P. Ltd., on the ground that the subject properties of Vidyut Metallica are in possession of the appellant and the order was passed by the Company Law Board without hearing the appellant. The advocates for respondents Nos. 1 and 2 would submit that the properties of Vidyut Metallica P. Ltd., were not in possession of the appellants and therefore the question of the appellant being required to be joined as a party to the company application before the Company Law Board or being heard by the Company Law Board never arose. The issue therefore which this court is required to decide in Appeal (L) No. 10 of 2015 is as to whether the properties which were subject matter of Company Application No. 296 of 2014 in Company Petition No. 13 of 2012 are in fact in possession of the appellant. It is only if this court comes to the conclusion that the properties which are the subject matter of Company Application No. 296 of 2014 are in fact in possession of the appellant, would the question whether the appellant ought to have been heard by the Company Law

Board before passing orders in Company Application No. 296 of 2014 would arise.

27. Admittedly, the appellant has not filed any appeals against the orders passed by the Company Law Board in Company Applications Nos. 297, 298 and 299 of 2014. Even the ad interim application moved before me on February 3, 2015, was only in respect of the orders passed by the Company Law Board in Company Application No. 296 of 2014 and not as regards the orders in any other company applications. This is clear from the prayer sought in the application seeking ad interim/interim reliefs, viz., seeking stay on the order passed by the Company Law Board only in respect of Company Application No. 296 of 2014, and not in the other three applications. It is in light of this prayer that the statement made by the learned senior advocate appearing for the respondents, that without prejudice to the rights and contentions of the respondents, the respondents shall not take possession of the factory premises/manufacturing units until February 6, 2015, was recorded. The same was continued by an order dated February 5, 2015 and thereafter further continued from time to time. At no subsequent point of time it was submitted before me by the appellant and/or any assurance given to me by respondents Nos. 1 and 2 that the statement made by the respondents, and recorded in the order dated February 3, 2015, was/should/would be applicable to the properties forming subject matter of Company Applications Nos. 297, 298 and 299 of 2014, the orders applicable to which were not appealed against. The appeal filed against the order passed in Company Application No. 296 of 2014 is finally heard by this court and on May 6, 2015, is reserved for orders. The statement recorded on February 3, 2015, pertaining only to the properties in respect of the subject matter of Company Application No. 296 of 2014 continues till the pronouncement of the order which is reserved. As already set out hereinabove, the said protection dated February 3, 2015, can by no stretch of imagination apply to the orders passed by the Company Law Board pertaining to properties which are the subject matter of Company Applications Nos. 297, 298 and 299 of 2014. Therefore, the submissions made on behalf of the appellant that the statement dated February 3, 2015, encompasses all the properties covered by the common Company Law Board order is untenable and baseless and cannot be accepted. Since at no point of time it was submitted on behalf of the appellant before me that respondent No. 2 be restrained from taking possession of the properties which are the subject matter of the order dated February 2, 2015, in Company Applications Nos. 297, 298 and 299 of 2014,,and since no orders were passed by this court at any point of time from implementing the orders passed in Company Applications Nos. 297, 298 and 299 of 2014, and further since no assurance was ever given in court by the learned senior advocate appearing for respondents Nos. 1 and 2 that the entire impugned order would not, in any manner, be implemented, the submissions made on behalf of respondent Nos. 1 and 2 that respondents Nos. 1 and 2 are attempting to overreach the process of this court and/or have breached the statements and assurances allegedly given to them or have breached the trust reposed by this court in not formally recording such statements and assurances

are false and untenable and therefore rejected.

28. The appellant has also alleged that in view of the alleged assurances, respondents Nos. 1 and 2, after February 4/5, 2015, did not take any further steps to take possession of any of (the properties being subject matter of Company Applications Nos. 297, 298 and 299 of 2014. As already set out hereinabove, Mr. Chinoy, the learned senior advocate appearing for respondents Nos. 1 and 2, has submitted that though the said respondents were anxious to forthwith implement the order passed by the Company Law Board, and in fact attempted to take possession of some of the properties, since the appellant filed an appeal impugning the order passed in Company Application No. 296 of 2014, and consequently the respondents made a statement that they will not take possession of the plant and machinery being subject matter of Company Application No. 296 of 2014, they did not proceed to take possession of the properties forming subject matter of Company Applications Nos. 297, 298 and 299 of 2014 until the appeal period in respect of the order passed in all the company applications was over. The explanation given by Mr. Chinoy is satisfactory and is accepted and the above allegation of the appellant is rejected. The allegations that the statement recorded in the order dated February 3, 2015, encompasses all the properties covered by the common Company Law Board order and that respondents Nos. 1 and 2 had given alleged assurance that the entire order dated February 2, 2015, will not be implemented pending disposal of the above appeal is also belied by the correspondence between the respective advocates of the parties and the learned Commissioner commencing from June 29, 2015, which is referred to hereinabove.

29. Mr. Kadam, the learned senior advocate appearing for the appellant, has submitted that the questions of law raised in Appeal (L) No. 10 of 2015 and also some of the grounds/averments made in the appeal pertain to the entire order of the Company Law Board dated February 2, 2015 and not just the order pertaining to Company Application No. 296 of 2014, and therefore the applicant is entitled to protection even in respect of properties which are the subject matter of other company applications in which appeals have not been preferred. This submission advanced on behalf of the appellant deserves to be forthwith rejected. The matter involves four different companies, 4 sets of facts and 4 sets of properties. The appeal filed pertains to only one company, viz., Vidyut Metallica P. Ltd., which has its own independent facts as well as properties. The appeal is filed only impugning the order passed by the Company Law Board in one out of the four company applications, viz., Company Application No. 296 of 2014. No appeal is filed in respect of the order passed in the other three company applications, each having its independent facts and properties. The applications seeking ad interim/interim reliefs in the appeal also pertain only to the order passed in Company Application No. 296 of 2014. As stated earlier, it is the case of the appellant that the order allowing the appellant to take over possession of the properties belonging to respondents Nos. 1 and 2 is with the appellant and the appellant was not heard by the Company Law Board.

Respondents Nos. 1 and 2 have disputed the allegation of the appellant that possession of the properties forming subject matter of Company Application No. 296 of 2014 is with the appellant and have submitted that therefore the question of hearing the appellant, or the appellant being deprived of natural justice does not arise. I have heard the submissions of the parties qua the possession of the properties being the subject matter of Company Application No. 296 of 2014 in detail and at great length. The parties have also submitted their written submissions in respect of the same. No submissions are made by the parties in respect of the properties being subject matter of Company Applications Nos. 297, 298 and 299 of 2014, the orders in which are not appealed against. In the absence of any hearing qua the said properties, even if the appellant succeeds in the present appeal on the ground that the possession of the properties being subject matter of Company Application No. 296 of 2014 are in their possession, and the Company Law Board by not hearing them have violated the principles of natural justice, this court cannot hold that the said decision will apply also to the orders passed by the Company Law Board in Company Applications Nos. 297, 298 and 299 of 2014. The order passed in appeal has to cover the subject of the appeal and no more. The subject in the present case being whether the appellant is in possession of the properties of Vidyut Metallic P. Ltd., which respondents Nos. 1 and 2 are allowed to take possession of. Therefore, even if the appeal is allowed, the order in so far as it permits respondents Nos. 1 and 2 to take possession of the properties which are the subject matter of Company Application No. 296 of 2014 only, can be set aside and nothing more. Therefore, the questions of law raised in the appeal, howsoever it may be framed, would be answered in the context of the issues raised in the appeal and the facts and circumstances of the present case. In the circumstances I am of the view that the appellant is not entitled to any reliefs and the application is rejected.