

MENTIONING

COMPANY LAW BOARD
NEW DELHI BENCH
NEW DELHI

C. P. NO. 34(MP)2016


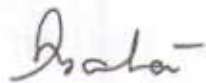

CA. NO.

PRESENT: B.S.V. PRAKASH KUMAR,
HON'BLE MEMBER

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF
THE COMPANY LAW BOARD ON 12.05.2016 AT 02.00 P.M**

**NAME OF THE COMPANY: M/s. Ashok Kumar Khaosla V/s. P.G.H. International Pvt. Ltd. &
Ors.**

SECTION OF THE COMPANIES ACT: 397/398,235(2), 237(b), 58 & 59

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1.	SUNIL Singh Parihar	Adv.	Petitioner	
2.	Neenakshi Arora	(Sr. Adv)))	
3.	S. K. BATRA	Practising CA	Respondent	
4.	Anandprakash Sharma	Advocate for respondents		 12/5/16

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Common Order

The Petitioner moved three CPs on similar grounds, the counsel appearing on the petitioner behalf argued one petition, stating remaining two are in similar lines.

The counsel mentioned CP 24/2016 seeking interim reliefs basing on these CPs filed on 8.1.2015. These were initially filed before CLB Mumbai, since thereafter CLB Mumbai having remained vacant on retirement of the Member there, the counsel says that she has now mentioned this CP with an apprehension that the money of the company going out without any clue to the petitioner. The petitioner had an apprehension over this aspect, because in the past also, the money come from the Petitioner side has gone into a Trust set up by the Respondents and earning interest over it. Likewise, shares were bought back from Shri S.N.Vijay and Shri Ram Visas Vijay through buy-back scheme, detrimental to the interest of the petitioner.

The Petitioner Counsel submits that they had invested ₹144crores in the company for 48% shareholding, whereas Respondent side acquired around 52% by putting only ₹2.4crores into the company. The Counsel further submits that the company issued bonus shares in such a way that the Petitioner could get only 3 bonus shares as against 4 bonus shares to the Respondents.

2. Since the Respondent's conduct in relation to the affairs of the company being prejudicial to the interest of the petitioner, if status quo is not granted against the shareholding, fixed assets of the company and the assets acquired by SJPN (R-4), the petitioner will be put irreparable loss and injury.

The Petitioner submits that the interest over the loan to the trust is more than 50% of the income derived from the object clause, which is in violation of RBI Guidelines, Exchange Management and Transfer Issue outside India Regulation 2000.

3. As against the submissions made by the Petitioner side, the Respondent Counsel submits that the petitioner over a period of time, in between 2001-2008 invested his monies in the company. From this company loans have been given to the Trust mentioned by the petitioner side since 2002 to till date, he is aware of this fact. It is not that loans given to the Trust overnight, it has been happening since 2002. This is not an act that has been done behind the back of the petitioner. The Petitioner has been aware of this arrangement, but he never raised any objection until he filed this CP before this Bench.

4. The Respondent Counsel further submits that this CP was filed before CLB Mumbai in the month of January, 2015, ever-since this Petition has never been mentioned and it was all along consigned to the Record Room of CLB Mumbai. Now after a lapse of one and half years, the Petitioner all of a sudden mentioning this CP for interim relief as if the company is likely to alienate assets of the company. No fresh application has been filed by the Respondent detailing the apprehension and the proof thereof to say that the respondents are likely to dispose of the assets of the company. The petitioner in fact relied upon the allegations of the petition dated 8.1.2015 to seek interim reliefs on 12.5.2016.

5. On hearing of submissions of either side, it appears that the Petitioner, on his own showing, has knowledge about the company giving loans to the Trust at least from 2011 onwards. This Petitioner has not taken any action from 2011 till date about the company giving loans to the trust. The Respondent Counsel submits that the Petitioner has been aware of buy-back that happened in the company also. When it is put to the Petitioner Counsel, she says that she has no instructions over this issue. Now, looking at the facts available, I don't find any merit warranting this Bench to pass any interim relief to the petitioner.

As to RBI guidelines, it appears that those Regulations govern the act complained of, having governed by RBI regulation, I believe that remedy lies elsewhere. However, since it has been happening for the last several years, it is a point that could be considered at the time of main hearing to find out as to whether this Board has any jurisdiction to deal with this issue, if so, what relief be granted, will be decided at the time of hearing main CP.

Since this matter falls within the jurisdiction of CLB Mumbai, Respondent side is directed to file reply within 6 weeks, rejoinder, if any, within 6 weeks hereof leaving it open to them to approach this Bench in case any emergency arise in between.

Since the petitioner counsel has stated that remaining CPs are also on the same lines, in those CPs also, the parties are directed to complete the pleadings as mentioned above.

Sdt

(B.S.V. PRAKASH KUMAR)
Member (Judicial)