

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****Dated: 06.10.2016****Company Appeal (AT) No. 03 of 2016****IN THE MATTER OF:****Man Industries (India) Ltd.****.....Appellant****Vs.****Man Infraprojects Ltd. & Ors.****....Respondents****WITH****Company Appeal (AT) No. 06 of 2016****Man Infraprojects Ltd. & Ors.****....Appellant****Vs.****Man Industries (India) Ltd. & Ors.****....Respondents****Present: Mr. Krishnendu Datta with Ms. Sanjana Saddy and Mr. Honey Jain, Advocates for the Appellants****Mr. Vishal Mishra, Advocate for the Respondent****ORDER**

The applicant before the Company Law Board (now National Company Law Tribunal hereinafter referred to as "Tribunal" for short) (Appellant herein) has preferred the Appeal (AT) No. 3 of 2016 challenging the order dated 21st July 2016 passed by the Tribunal, Mumbai Bench in C.P.No.13/(MAH)/2016/(T.P.). By the said impugned order, the Tribunal held that the Respondent No. 1 Company – M/s Man Infraprojects Ltd. & Others have not violated the interim order dated 10th June 2016 passed by

the Tribunal and thereby refused to stay the steps taken by the respondent to sell its immovable property at Indore.

2. In the analogues Company Appeal (AT) No. 6 of 2016, the respondents Man Infraprojects Ltd. and Others are the Appellant. They have challenged the order dated 23rd February 2016 and 10th June 2016 passed by the Tribunal in the said Company Petition.

3. By order dated 23rd February 2016, the then Company Law Board while allowed the respondent M/s Man Industries (India) Ltd. to file reply about maintainability of the Company petition recorded the undertaking given by one Mr. Rajesh, Group CEO, that no further loan would be availed by Respondent No. 1 (Man Infraprojects Ltd.) and that other transaction(s) which are in pipeline would be processed without any mortgage of the property of the said Respondent No. 1 Company and that no loan shall be availed in any case by disbursement of proposed fifty crore till the next date of hearing.

4. As both the appeals have been preferred against the Interim Order passed by the Company Law Board/NCLT it is not necessary to discuss the merit of the main petition which is pending adjudication before the Tribunal.

5. The order dated 23rd February 2016 impugned in Company Appeal (AT) No. 6 of 2016 was passed by the then Company Law Board. In view of provisions under Section 434(1)(b) of the Companies Act 2013, the present appeal is not maintainable against the said order.

6. In so far as the order dated 10th June 2016 impugned in Company Appeal (AT) No. 6 of 2016 is concerned, the said order has been challenged by the appellant on 24th August 2016 i.e. much beyond the period of limitation of 45 days prescribed under the Act. Even no petition for condonation of delay has been filed. Therefore, the Company Appeal (AT) No. 6 of 2016 is also not maintainable being barred by limitation.

7. We accordingly dismiss Company Appeal (AT) No. 2016 filed by 'Man Infraprojects Ltd. and others'.

8. In Company Appeal (AT) No. 3 of 2016, the appellant Man Industries(India) Ltd. has relied on interim order dated 10th June 2016 passed by the Tribunal, which reads as follows:-

"Petition mentioned.

I have heard learned counsel for the parties at some length.

In the main petition on 23.2.2016 learned counsel for Respondent No. 1 company after obtaining instructions from Shri Rajesh who is the group CEO had stated that no further loan would be availed by Respondent No. 1 company and one transaction which is in pipeline would be processed without any mortgage of the property of respondent No.1 company. It was further stated that no loan was to be availed in any case by disbursement of proposed fifty crores till the next date of hearing. The grievance made in this petition is that public notice (annexure-A) has been published on 27.5.2016 by one Mr. Vimal Kumar Jain, Indore indicating that their client has entered into an agreement to purchase Plot No. 15, situated at PU-3, Scheme No. 54 of Indore

Development Authority having total area of 504 square meter along with total built up area including ground floor plus 4 stories and roof totalling to 2103.19 square meter from Man Infraprojects Ltd., who hold the lease rights and ownership on this land through its director Jagdish Mansukhani, resident of 17-18, Joy Builders colony, Indore(MP). The notice further clarifies that this property was earlier held in the name of Man Industries(India) Ltd. which has since been transferred in the name of Man Infraprojects Ltd. There is a demerger approval of Bombay High Court in this regard. By the notice objections have been invited from the general public within ten days. The main plank of argument of the applicant-petition is that the statement made in the order dated 23.2.2016 in letter and spirit has been violated and if the respondents are proceeding with regard to any such transaction or alienating property mentioned in the public notice then they should be restrained from doing do. Additionally the prayer has been made to restrain them from issuing any further notice.

Mr. Makhija, learned counsel for the respondent has argued that Bombay High Court has already appointed an Arbitrator and the dispute raised in the company petition is fully covered by the reference made to the Arbitrator. In this regard learned counsel has pointed out that application CA No. 41/2016 under Section 8 of the Arbitration Act has already been filed. Additionally CA No. 42/2016 with regard to maintainability on the ground that petitioners do not fulfil the requirements of section 399 has also been filed which is pending.

Learned counsel for the respondent has requested that first of all those applications should be decided even before taking up any application under consideration. It has further been pointed out that petitioners have also issued public notice misrepresenting order passed by this court on 23.2.2016 and thereafter the respondents have filed CA No. 63/2016 for issuing of contempt notice and CA No. 64/2016 for dismissal of the company petition on that ground. The main CP is posted for hearing on 7.7.2016 along with all the applications.

*Having heard the learned counsel for the parties I am of the considered view with the public notice impugned in this application issued by one Mr. Vimal Kumar Jain, Indore would clearly indicate that there is some sort of transaction in the offing which relates to the property of respondent No. 1 company. The respondents have neither affirmed the transaction indicating in the public notice nor they have been able to rebut any such transaction. It is simply maintained that public notice does not completely disclose the facts or any agreement. Therefore, till the next date of hearing the public notice issued by Mr. Vimal Kumar Jain, Indore shall remain stayed as it violates the spirit of the statement made in the order dated 23.2.2016. It is further directed that both the parties namely petitioner and respondents would restrain from issuing any public notice with regard to order passed by this Board or in any other connection without specific permission from this Court. **It is further clarified that the Respondent No. 1 company shall not create any third party right or alienate/mortgage or***

create encumbrance on the asset of Respondent No. 1 company in any manner till the next date of hearing.

Reply if any be filed within two weeks with a copy in advance to the counsel opposite. Rejoinder if any be filed within a week thereafter with a copy in advance to the counsel opposite."

9. Subsequently, when the Company Petition was transferred at Mumbai Bench, Mumbai, the Appellant Man Industries (India) Limited alleged that the Applicant has learnt that Respondent No. 1 Company has agreed to sell its immovable property at Indore.

10. In this background, it was alleged and argued that the decision of Respondent No. 1 Company and others is in violation of the order dated 10th June 2016. The Tribunal by impugned order dated 21st July 2016 observed that Respondent No. 1 Company and others have not violated the order dated 10th June 2016 as the earlier order does not relate to the property of the Company at Indore. The impugned order dated 21st July 2016 reads as follows:-

"C.P.No. 13/397-398/NCLT/MB/MAH/2016

The Petitioner counsel mentioned this Company Application No. 1 of 2016 stating that the applicant has learnt that R-1 Company has agreed to sell its immovable property at Indore and to execute registered sale deed in favour of the transferee.

The Counsel appearing on behalf of the Petitioner submits that execution of transfer deed is in violation of order dated 10.06.2016

therefore, sought further interim relief restraining the Respondents proceeding with execution of sale deed.

Whereas, the Counsel appearing on behalf of the respondent has made a categorical statement, that R-1 Company is bound by the order dated 10.06.2016 and Company has not violated order dated 10.06.2016, therefore, prays this Bench that no order be passed against R-1 Company.

For having R-1 Company stated that R-1 Company is not dealing with the property where upon an order was passed on 10.06.2016, the Petitioner Counsel has now come with another relief seeking restraint order on other property of the company at Indore, not in relation to the property on which restraint order was passed on 10.06.2016, but no such prayer has been made either in the mentioning application or in the submission made by the Petitioner Counsel.

Looking at the submissions of either side, it appears that R-1 Company has not violated the order dated 10.06.2016 therefore, this bench has not noticed any merit in the urgent mentioning made by the Petitioner.

Having the record pending at New Delhi Bench, not reached here till date, after 07.07.2016 for no date has been given, list this matter on 30th August 2016 at 02.00 P.M.”

11. Earlier this Court passed the following Interim Order on 16th August 2016:-

"The appellant has filed the copies of Speed Post by which notices were issued on the respondents. No person appeared for the respondents. Let fresh notices be issued on respondents for which requisites, etc. be filed by the appellant along with requisite fees for service by 19th August 2016. Registry may inform of this order by e-mail to the respondents, if e-mail address is available.

Post the matter on 6th September 2016 at 10.30 A.M.

In the meantime the interim order passed by National Company Law Tribunal, Principal Bench, New Delhi on 10th June 2016 shall continue.

Pendency of this appeal shall not come in the way of National Company Law Tribunal, Bombay Bench to decide the case on merit."

12. We have heard the parties and gone through the records particularly the order dated 10th June 2016 passed by the Tribunal. From the plain reading of the said order it is clear that the Tribunal by way of recording undertaking directed the Respondent No. 1 Company and others that they shall not create any third party right or alienate/mortgage or create encumbrance on the asset of Respondent No. 1 Company in any manner till the next date of hearing. This order takes care of all the assets of the Respondent No. 1 Company, including the immovable property at Indore.

13. We, accordingly, set aside the impugned order dated 21st July 2016 passed by the Tribunal, Mumbai Bench and direct the parties to act in terms of the interim order dated 10th June 2016 passed by the Tribunal in

Company Petition No. 13(MB)/2016 till final decision of the said case. The Sale Deed, if any, already executed after 10th June 2016 may be treated to be void, if the Company Petition is allowed in favour of the Appellant.

14. The Tribunal at Mumbai Bench will decide the Company Petition on merit at an early date, taking into consideration Section 422 of the Companies Act 2016. The Company Appeal (AT) No. 3 of 2016 is allowed with aforesaid observations and directions.

(Justice S.J.Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical