

COMPANY LAW BOARD  
NEW DELHI BENCH  
NEW DELHI

CP NO. 12(MB)/2016

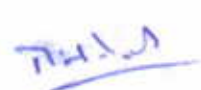
CA NO. 106/C-1/2016

PRESENT: CHIEF JUSTICE M. M. KUMAR  
CHAIRMAN

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF THE  
COMPANY LAW BOARD ON 23.03.2016

NAME OF THE COMPANY: **Smt. Shashibala Singh**  
**Vs.**  
**M/s. Monifa Engineering Pvt. Ltd & Ors.**

SECTION OF THE COMPANIES ACT: 397, 398 of the Companies Act 1956.

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Amju John	Advocate	Petitioner	
2	Hitesh Sachet	Advocate.	!!	

1. Viveender Ganda; Sr. Adv.
  2. Mohit Dommen; Adv
  3. Arun Bagai; Adv
- } for Respondents 1-3

P.T.O

**ORDER**

CA No. 106(C-1)/2016:

This is an application with a prayer for issuance of interim directions seeking stay on issuance of increase share capital till the decision of the claim made by the Petitioner that her shareholding is 40% as against 25% shown by respondent No.1 company. A further prayer has been made to stop induction of Additional Director by the Respondents.

2. The petitioner has filed C.P. No.12(MB)2016 raising various issues and the reply to the aforesaid petition has already been filed. The rejoinder is awaited. There were interim directions issued in the order dated 23.02.2016 which reads as under:-

*" Mr. Vipul Ganda, Advocate after obtaining instructions has stated that the status of the Petitioner, Smt. Shashibala Singh as a director shall not be changed without specific permission from this Board. Ld. Counsel for the petitioner Smt. Shashibala Singh after instructions has stated that she will sign loan documents of the Bank as and when a call from the Bank is received. Let the matter be listed for hearing on 8.4.2016 at 10.30 AM."*

3. The principal issue raised in the petition is regarding reduction of share capital from 40% to 25%. According to the allegations the aforesaid decrease of the share capital of the petitioner is the result of fabrication and interpolation which amounts to oppression and mis-management within the meaning of sections 397 and 398 of the Companies Act 1956. The allegations go back to the year 2008 when it was reduced to 20% and then to the year 2011 and 2012 when it was raised to 25%. Accordingly the prayer has been made for interim order.

4. During the pendency of the aforesaid petition the present application has been filed seeking stay of the increase in the share capital of Respondent No.1 company. The meeting appears to have been held on 31.01.2016 approving the issuance of Right Issue of 30000 equity share of Rs. 100 each at a premium of Rs. 60/-. The Right Issue has been offered for subscription to the equity share holders in proportion to their present share-holding as per existing paid-up capital of the company whose names appear in the Register of the Members of the Company as on 01.02.2016. The issue was to remain open for a period of 30 days commencing from 27.02.,2016 to 26.03.2016. A copy of this letter has been placed on record (PA1/1A).

5. In the reply filed by the non-applicant-respondent it has been highlighted that the applicant-petitioner has been a Director and shareholder of Respondent No.1 company. Initially she had 40% of paid-up equity capital as per the record as on 29.09.2007. However, her shareholding was reduced to 4000 equity share as per Annual Report filed on 30.09.2008 reducing her share to 20% which had later on increased to 25%.

6. It is pertinent to point out that it is a closely held family company and the Petitioner is daughter of Respondent No.2. In the preliminary submission of the reply it has been stated that the petitioner is deliberately trying to divert the business and steal the customers/clients of Respondent No.1 company. She has been extorting money from the respondent before signing the loan documents with State Bank of Bikaner and Jaipur. She also made repeated complaints to the Finance companies falsely alleging that her signatures on documents have been fabricated whereas she has been differently signing the documents deliberately. Reference to her signature on official documents such as the Pan Card, Income Tax Returns, Balance Sheet etc. and the petition has been made to demonstrate different style of signature. The Respondent No.1 company faces an immediate liability of Rs. 90,41,764/- which is outstanding payment of Sales Tax as per notice issued by Deputy Commissioner of Sales Tax on 07.01.2016 (Annexure-I). The Respondent No.1 company is in dire need of funds. It is



also in the process of organizing the strategy of purchasing raw-material at a lower cost. The company has negotiated with a new vender (Banco Aluminium Limited) at a lower cost than the existing vender. To overcome the cash crunch it requires additional working capital. The Respondent No.2 & 3 have already infused a sum of Rs. 29,00,000/- by way of unsecured loans to the Respondent No.1 company and the raising of share capital is absolutely essential. The issuance of Rights Share provides an equal opportunity to all the share-holders/Members of the company and therefore the present application. Moreover the applicant-petitioner has never attended any Board Meeting in her capacity as Director despite receiving proper notices.

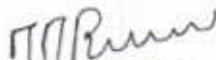
7. I have heard the Id. Counsel for the parties at a considerable length and find that the present application would not merit acceptance. The share capital of the company by issuance of right issue was already ripe when the Company Petition was filed on 23.02.2016. The status of the applicant-petitioner as a Director has been protected by interim order of 23.02.2016. She has also given an undertaking to sign loan documents of the bank as and when a call from the bank is received.

8. In the reply filed to the main petition a reference has been made to a compromise deed dated 30.03.2015 which has been executed between the Petitioner on the one hand and Respondent No.2, 3 and others, on the other hand. In accordance with the terms of aforesaid settlement the petitioner has received a sum of Rs. 20,00,000/- for tendering resignation from Respondent No.1 company as well as another company, namely, Hind Tools India Pvt.Ltd. In addition there is a stipulation for transferring a plot to her. Some other facts have also been brought to my notice which would show that no case for a interim relief is made out. Any interim order would adversely affect the interest of Respondent No.1 company. There is a need of liquid cash for satisfying the notices of recovery from the Sales Tax Department. Likewise the new scheme of purchases for further improvement in the purchases of the respondent No.1 company are in the offing which also requires cash liquidity. Moreover under the terms of settlement she appears to have surrendered all her share for a valuable consideration.

Therefore, prima facie I am not able to persuade myself to grant any interim relief because any further interim order may adversely affect the interests of the respondent No.1 company.

9. In view of the above, this application fails and the same is dismissed. However any expression of opinion in this order shall not be construed as final expression of opinion on merits of the main case which shall be decided without being influenced by any observation made herein. These are only first blush observations which may on a deeper probe, after filing pleadings, become further clearer and eve be reversed.

10. The application is disposed of.

  
[CHIEF JUSTICE M.M. KUMAR]  
CHAIRMAN

Date: 28.03.2016  
[ravi]