

COMPANY LAW BOARD
NEW DELHI BENCH
NEW DELHI

C. P. NO. 110(ND)09


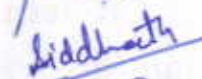
CA. NO. 71/C-II/2016

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 24.05.2016 AT 02.00 P.M**

**NAME OF THE COMPANY: M/s. Abnash Chander Mahajan & Ors. V/s. M/s. Vikas
 Promoters Pvt. Ltd. & Ors.**

SECTION OF THE COMPANIES ACT: 397/398

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Mr. K. Datta, Adv.		} Petitioner	} 
2.	Ms. Nayan Aggarwal, Adv.			
3.	Mr. Jayant Mehta	Adv.		
4.	Mr. Siddharth Sharma	Adv.	} Respondent	} 
5.	Mr. Vipul Garg			

Order

The petitioner filed CA 71/2016 to restrain the respondents from selling, alienating, transferring or creating any third party rights of any nature whatsoever over the assets of R1 company on the ground that R1 company has been selling the assets/stocks of the company from time to time which is reflecting reduction in inventory and also reduction in loans that were allegedly given by respondents to the company. If this position is allowed to continue, tomorrow by the time the issues are decided in this case, nothing will remain to the petitioner to realize in pursuance of the order passed by this Bench on 16.01.2014.

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2. To which, the respondents counsel submits that the respondents raised objection to the valuation report over the value of the shares, that has not yet been decided and that this Bench passed final order dated 16.01.2014 limited the company not to create third party rights over only 20% of the total saleable assets of R1 company until full payment is made to the shares of the petitioner, thereby, it is not open to the petitioner to seek restraint order over the entire assets of the company, when the petitioner shareholding is only 15% in the company. Since petitioner's interest is limited to over 9.30% of saleable area in the property of R1 company, for there being already an offer from the respondents side to provide space proportionate to the valuation of the petitioner's interest, it is not equitable on the part of the petitioner to seek an order on entire assets of the company resulting into stalling the function of the company. Henceforth, the respondent counsel sought for dismissal of this application.

3. On hearing the submissions of either side and on seeing the documents placed by the petitioner side, it appears that the respondents side despite two years have gone by from the date of the order, the respondents till date have not paid single penny to the petitioner. It is evident on record that these respondents have been selling the properties and taking money out of the company. If no order is passed at this juncture restraining the company from creating third party rights over this property, tomorrow there will be nothing in the company to pay the consideration to the petitioner's entitlement as per the orders dated 16.01.2014.

4. On seeing the Balance Sheet dated 31.03.2015, it appears that the respondent company had an inventory of ₹41,37,75,860 in 2014, that had come down to ₹24,43,17,579 as on 31.3.2015, again thereafter, by the time these respondents filed their affidavit in September, 2015 before the



Honorable High Court, Delhi in terms of the order dated 06.08.2015, the inventory has further come down to ₹8.75crores, meaning thereby, this company have been regularly selling the stocks of the company and making money to themselves. If sale of assets/stock is permitted to continue to happen, the respondents would sell the entire stock of company by the time this litigation is completed.

5. It is true that this Bench passed final order on 16.01.2014, looking at the situation as on date, restraining the company not to create third party rights over 20% of the total saleable assets of R1 Company until full payment was made to the shares of the petitioner. Now, situation has been changing from time to time, inventory has been rapidly coming down. In view of the current situation, I believe equity demands this Bench to modify that order directing the company not to sell, alienate, transfer or create any third party rights over the assets, including stock of the company pending disposal of 634A application. Therefore, I hereby, accordingly ordered.

6. Mr. Mehta, counsel appearing on behalf of the respondents' side prays this Bench for time to file reply to the application, but Mr. Mehta appearing on behalf of the respondents placed all his defenses in his oral submissions as above mentioned. When a party discloses all available defenses in oral submissions; when the Bench believes that such defenses are not tenable and when right of hearing is amply provided, no application need to be kept pending for the sake of pending and no court is under obligation to keep any application or any petition pending for the sake of formal completion of pleadings in writing.

Accordingly, this application is hereby disposed of.

Sdt

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