

BEFORE THE COMPANY LAW BOARD, NORTHERN REGION BENCH, NEW DELHI

CA NO.178/2013  
IN  
CP NO.38(ND)2013  
PRESENT: SHRI DHAN RAJ  
HON'BLE MEMBER

IN THE MATTER OF SECTIONS 397, 398 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF:

1. Shri Ajay Nagrath ,  
S/o Shri Narinder Kumar Nagrath,  
R/o House No.2840, Gurdev Nagar,  
Ludhiana, Punjab .....Petitioner-1
2. Shri Rohit Nagrath S/o  
Shri Narinder Kumar Nagrath,  
R/o House No.B-XXI/2840, Gurdev Nagar,  
Ludhiana Punjab .....Petitioner-2

VS.

1. M/s.Rampur Hydro Power Ltd.  
having its registered office at B-23,  
Phase-II, Focal Point, Ludhiana .....Respondent-1
2. Mr.Rajit Mehra S/o Shri Rakesh Mehra,  
R/o 1099, Opp.Chattar Singh Park,  
Model Town, Ludhiana,  
Punjab-141002 .....Respondent-2
3. Smt.Rita Mehra W/o Shri K.C.Mehra,  
R/o 1099, Opp.Chattar Singh Park,  
Model Town, Ludhiana,  
Punjab-141002 .....Respondent-3
4. Mr.Rajesh Mehra, S/o K.C.Mehra,  
R/o 1099, Opp.Chattar Singh Park,  
Model Town, Ludhiana,  
Punjab-141002 .....Respondent-4



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5. M/s.Spaceage Switchgears Limited,  
68, Industrial Development Colony,  
Mehrauli Road, Gurgaon, Haryana  
.....Respondent -5
6. Mr.Yogesh RATHI S/o Shri Om Parkash Rathi,  
A-123, Shalimar Garden,Sahibabad,  
Ghaziabad,UP-201 004  
.....Respondent-6
7. Mr.Preshant Ragunath Deshpande  
S/o Shri Raghunath Vishwanath Deshpande,  
372, Nilay, TR Nagar, Main Road,  
Bangalore, Karnataka-560032  
.....Respondent-7
8. Mr.Stephny Hazel Dcosta  
S/o Shri Cecil Paul Cornello  
R/o B-4, Kanchan Apartments, Marol Marushi,  
Andheri East Post Office, Mumbai,  
Greater Mumbai, Maharashtra-400 059  
.....Respondent-8
9. Ms.Preeti Mehra W/o Late Sh.Rakesh Mehra  
R/o 1099, Opp.Chattar Singh Park, Model Town  
Ludhiana, Punjab-141002  
.....Respondent-9
10. Ms.Geetika Mehra W/o Shri Rajit Mehra  
R/o 1099, Opp.Chattar Singh Park, Model Town  
Ludhiana, Punjab-  
.....Respondent-10
11. Ms.Neetu Mehra W/o Sh.Rajesh Mehra  
R/o 1099, Opp.Chattar Singh Park, Model Town  
Ludhiana, Punjab-141002  
.....Respondent-11
12. M/s.Par Chemicals, having its registered office  
At Gill Road Ludhina, Punjab-141003  
.....Respondent-12
13. M/s.Rjit Power Limited, having its registered office  
At B-23, Phase-II, Focal Point, Ludhiana  
..... Respondent-13
14. M/s.Mangalam Energy Development Co. Pvt. Ltd.  
605, Ansal Bhawan, 16, K.G.Marg,  
New Delhi-110 001  
.....Respondent-14

**PRESENT ON BEHALF OF THE PARTIES**



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1. Shri Hemant Sharma, Advocate for Petitioner
2. Shri Anant Sharma, Advocate for Petitioner
3. Shri Rajeev K. Goel, Advocate for R-1, 6, 7 & 14
4. Shri Ajay Garg, Advocate for R-1, 6, 7 & 14
5. Shri V.P.Chhabra, PCS for R-4

**(APPLICATION UNDER REGULATION 44 OF THE COMPANY LAW BOARD REGULATIONS, 1991 TO SEEK VACATION OF STATUS QUO ORDER DATED 11.4.2013).**

**ORDER**

**(Date of final hearing : 12<sup>th</sup> December, 2013)**

In this case, the Petitioners have filed the Company Petition under Sections 397 & 398 of the Companies Act, 1956 against the Respondents for alleged acts of oppression and mismanagement. While the Company Petition was mentioned on 11.4.2013 before this Hon'ble Board, status quo was granted with regard to immoveable assets which have not been mortgaged with the banks /institutions, till the next date of hearing. As the Company Petition is pending for adjudication, present CA has been filed by Advocate for R-1, 6, 7 & 14 with the prayer to vacate the Interim Order dated 11.4.2013 and to allow the Respondent No.1 Company to raise finance from banks/financial institutions against the moveable and immoveable assets of Respondent No.1 for funding the construction of SECHI-II 5 MW Small Hydro Electric Project in District Shimla. Precisely speaking, the Respondent/Applicant Advocate has submitted that the Implementation Agreement ((IA) dated 1.3.2008 was signed between the Government of Himachal Pradesh and Respondent No.5 for implementation of the aforesaid project. As per the terms & conditions of the said Agreement, the Independent Power Producer (IPP) was supposed to start construction at site within six months from the date of signing of Implementation Agreement i.e. on or before 31<sup>st</sup> August, 2008 after obtaining all statutory/non-statutory clearances. Further, it has been stated that as per present the policy guidelines of Himachal Pradesh Energy Development Agency, regarding extension in time period in Implementation Agreement maximum 36 months are allowed subject to payment of extension fees by the Independent Power Producers (IPP) and hence, the Respondent No.1 Company is required to complete the project expeditiously and within the time frame fixed for the purpose.

1.1 The Respondent/Applicant Advocate has further submitted that the Respondent No.1 Company has not been able to start the construction activity on the Hydro Power project till date and has been paying an extension fees of Rs.10,000/- per Mega Watt i.e. Rs.50,000 per month since 1.7.2008. In this process, the Respondent Company has already deposited



Rs.13,63,333/- vide demand draft dated 4.10.2010 and another sum of Rs.10,38,333/- vide demand draft dated 28.6.2013. It has also been submitted that the Respondent No.1 Company is now faced with a situation of cancellation of its license to build, own and operate the Sechi, 5 MW hydropower project, being its only asset. On the other side, letters dated 17.6.2013 and 2.7.2013 have been received from the nodal agency of the Government of Himachal Pradesh informing the Respondent No.1 Company of cancellation of its 5 MW license in case construction activities are not commenced forthwith. However, the Interim Order dated 11.4.2013 of this Hon'ble Board has brought about all construction activities to a halt at a time when Respondent No.1 Company was just about to commence construction. In the event of cancellation of license of Respondent No.1 Company, it shall effectively render the Respondent No.1 to lose its only asset causing irreparable loss and financial hardship to all the stakeholders and the entire amount paid by Respondent No.1 Company towards construction and other costs will have to be written off causing immense hardship and financial loss to Respondent No.1 Company. Therefore, the Respondent/Applicant Advocate submitted that it is in the interest of all stakeholders that Respondent No.1 Company be allowed to immediately start work on setting up of 5 MW hydro electric project which requires an estimated expenditure of about Rs.42 crores and the same is required to get funding from banks/financial institutions against the security of immovable and movable assets of the Respondent No.1 Company.

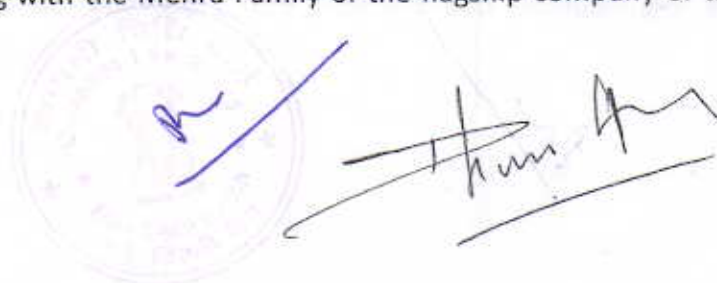
1.2 The Respondent/Applicant Advocate has also mentioned that the mala fide intention of the Petitioners is evident from the fact that while they claim to be 14% shareholders, they have suppressed the transfer of all their 14% shares and resignation from Board of Directors of the Respondent No.1 Company. However, despite this position, no prejudice would be caused to the Petitioner if the construction of project is allowed by this Hon'ble Court.

2. Shri V.P.Chhabra, authorized representative also submitted on behalf of Respondent No.4 that R-4 is the Director from the date of incorporation and belongs to Mehra Group. However, after the sale of shares by the Mehra Group, R-4 has nothing to do with the management of the company but still continuing in the transitional phase till the discretion of the new management. Further, it has been reiterated that Mehra Group has sold all their shares to R-14 and their nominees and have no grievance about the transaction except that balance amount of Rs.10 lacs is to be received but have confidence on the buyer and have no grievance on this amount also. Thus, the transactions of sale is 100% complete from the side of Mehra Group. Apart from this, it has also been stated that the buyer has purchased the company for setting up plant taking finance from Banks/Financial Institutions is a necessity and always the first condition of banks/institutions is the mortgage of property of the company, the order of Hon'ble Board dated 11.4.2013 has become a hindrance for the setting up of plant and growth of company which is not in the interest of company and hence, R-4 has no objection if the order is vacated.

3. The Petitioners Advocate has submitted the reply to the present CA stating therein that the Petitioners are the co-promoters along with the Mehra family of the flagship company of the group i.e. Rajit Paints Limited and also, of other sister companies including the Respondent No.1. However, the Mehra family, besides other acts of oppression and mismanagement, have illegally and fraudulent manner ousted the Petitioners group from the Board of all the Companies during September-October, 2012 and shown to have gained complete control of the companies. Besides, the vacation from the office of the Directors of the Petitioner Group was also shown u/s 283(1)(g) of the Companies Act, 1956.

4. The Petitioners/Non-applicants Advocate has submitted the reply to the submission given on behalf of Respondent No.4 that the Respondent No.4 is not a non-applicant in the CA moved on behalf of Respondent Nos. 1, 6, 7 and 14. Further, it has been emphasized that the Mehra family, in connivance with the Respondent Nos.1,6,7 and 14, conspired to forge and fabricate the share transfers and the resignation letter of the Petitioner group. It has also been stated that the Petitioners have filed a Petition u/s 482 of the Cr.P.C. in the Hon'ble Punjab & Haryana High Court over the inaction of the police and after hearing the Petitioners, vide Order dated 22.10.2013, Hon'ble High Court has issued notice of motion and has directed the State of Punjab to file a status report on the complaint. The Petitioner Advocate has clarified that Respondent No.5, M/s.Space Age Switchgears Ltd. is holding 51% shares in the Company i.e. 25,500 equity shares of Rs.10/- each. Further, while on the one hand, the Respondent No.4 is stating that he has sold his shares, on the other hand, he along with the Mehra group members has filed a Petition for anticipatory bail before Additional Sessions Judge 02 South Delhi which has been dismissed on 15.10.2013. It has also been mentioned that in a criminal complaint, the Mehra group has been accused by the Respondent No.14 for cheating in alleged sale of shares. However, it has been denied that the Petitioners have ever sold their shares.

5. In the rejoinder to the reply of Advocate for R-1, 6, 7 & 14, the Petitioner Advocate has submitted that the present CA is not maintainable in as much as the Respondent Nos.6, 7 and 14 are not the directors of the company and no shares have been transferred/allotted to Respondent No.14. Further, it has been mentioned that the Respondent No.1 Company was co-promoted by Petitioners Family (Nagrath Family) and Mehra Family and the Applicants are totally strangers in the company and their locus standi is already in question in the Petition. Precisely, it has been averred that the Petitioners have never sold their shares and resigned from the Board as the answering respondents have forged the signatures of the Petitioners to portray a wrong picture. Besides, it has been alleged that the Applicants/Respondents are wrongly claiming to be the directors/majority shareholders of Respondent No.1 Company and thereby, seeking the dismissal of the Petition whereas one of the main contentions of the Petitioners is that they have not transferred any shares to the Applicants. In fact, the Petitioners are the co-promoters along with the Mehra Family of the flagship company of the



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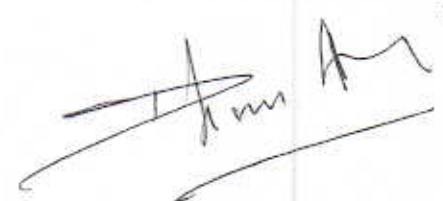
group i.e. Rajit Paints Limited and also of the other sister companies and the Mehra family besides other acts of oppression and mismanagement, have illegally and fraudulent manner ousted the Petitioners group from the Board of all the companies during September-October, 2012 and gained complete control of the companies. Further, it has been alleged that the Mehra Family in connivance with each other have illegally filed a forged and fabricated Form 32 showing that the Petitioner No.1 has resigned from the company and the Mehra Family has illegally shown to have appointed three unconnected persons as directors.

5.1 The Petitioners Advocate has also submitted that as per the terms of the Govt. of Himachal Pradesh, Respondent No.5 which was awarded the Project, cannot transfer its shareholding beyond 51% in the project. As a matter of fact, the Respondent Nos.6,7 and 14 (Applicants) are complete strangers to the company and cannot represent Respondent No.1. On the contrary, the Respondent No.5 and the Petitioners continue to hold 65% shareholding in the company and hence, the Respondent Nos.6, 7 and 14 (Applicants) have no legal right to run the project.

6. In his arguments, the Petitioners/Non-applicants Advocate has submitted that the Applicants herein are making an attempt to seek loans to mortgage the properties of the company to the Banks with the malafide intent and motive of increasing the liabilities of the company in the garb/veil of procurement of working capital for the company. It has also been pleaded that the Implement Agreement dated 1.3.2008 is between the Govt. of Himachal Pradesh and M/s.Spaceage Switchgears Ltd. (Respondent No.5 and holding 51% shares in the company) and hence, the Applicants have no locus standi in the matter. In addition, Respondent Nos. 6 and 7 are not Directors of the company and no shares have been transferred/allotted to Respondent No.14. In fact, the Respondent No.1 Company was co-promoted by Petitioners Family (Nagrath Family) and Mehra Family and the Applicants are total strangers in the company and their locus standi is already in question in the company Petition.

6.1 It has also been pleaded by the Petitioner Advocate that Spaceage Switchgears Ltd. (Respondent No.5) was the original promoters and Mehra and the Nagrath Facilities joined as co-promoters later on and Respondent No.5 continues to be 51% shareholder as per the requirements of the terms of the award of the project by the State of Himachal Pradesh and the Respondent Nos.6, 7 and 14 are total strangers to the company. Lastly, it has been argued that irreparable loss will be caused to the company and the Petitioners if the same is allowed in as much as in case the Petitioners succeed in the Petition, the heavy burden on the assets of the company cannot be undone. Further, the Applicants are a third party and there will be no check on the financial and business prudence.

7. The Applicants/Respondents No.1, 6, 7 and 14's Advocate extended the arguments that the Implementation Agreement dated 1.3.2008 was signed between the Government of



Himachal Pradesh and Respondent No.5 for implementation of Sechi-II, 5 MW Small Hydro Electric Project in District Shimla and as per the terms and conditions of the aforesaid Implementation Agreement, the Independent Power Producer (IPP) was supposed to start construction at site within six months from the date of signing of Implementation Agreement on or before 31<sup>st</sup> August, 2008 after obtaining all statutory/non-statutory clearances. Further, the present policy guidelines of Himachal Pradesh Energy Development Agency, regarding extension in time period in Implementation Agreement maximum 36 months are allowed subject to payment of extension fees by the Independent Power Producers (IPP). It has also been submitted by the Respondents Advocate that the Respondent No.5 along with Mehra Group and Nagrath Group promoted Respondent No.1 Company for implementation of the hydro power project and hence, Respondent No.1 Company was required to complete the project expeditiously and within the time frame fixed for the purpose. As the Respondent No.1 Company has not been able to start the construction activity on the Hydro Power Project till date, an extension fees is being paid from time to time by the new management which is represented by the Applicants.

7.1 It has been highlighted that the Respondent No.1 Company is now faced with a situation of cancellation of its license to build, own and operate the Sechi, 5 MW hydropower project, being its only asset and thereby, in the event of cancellation of license of Respondent No.1, it shall effectively render the Respondent No.1 to lose its only asset causing irreparable loss and financial hardship to all the stakeholders and the entire amount paid by Respondent No.1 Company towards construction and other costs will have to be written off. Further, in addition, it has also been emphasized that all immovable and movable assets acquired by Respondent No.1 have only been for the construction of the 5MW hydro electric project. Not only this, the Respondent No.1 represented by the Applicants has been expending an amount of more than Rs.3 lakhs per month on salaries and establishment costs towards the 5 MW hydro electric project. In fact, the construction of a 5 MW hydro electric project is a capital intensive project and requires an estimated expenditure of about Rs.42 Crores and hence, it is the necessity to get funding from banks/financial institutions against the security of immovable and movable assets of Respondent No.1 Company. Lastly, it has been argued that the interest of Respondent No.1 is supreme and in the present case, Mehra Group has already exited from the Respondent No.1 Company and the Applicants are investing huge amount of money to develop the only valuable asset of the Respondent No.1 Company. Moreover, The Respondent No.5 i.e. Spaceage Switchgears Ltd. in their short affidavit filed before the Hon'ble Board has also sought for outright dismissal of the Company Petition and the Applicants have acquired the Respondent No.1 Company after payment of valuable consideration to Mehra Group and Nagrath Group.



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8. Having gone through the contents of the Company Petition, reply, rejoinder and arguments (oral and written), it is amply clear that the Respondent No.1 Company was co-promoted by Nagrath Family, Mehra Family and Spaceage Switchgears Ltd. (Respondent No.5) to take up the 5MW Hydro Electric Power Project in Himachal Pradesh. As a matter of fact, the license to construct the Hydro Power Project was obtained by Respondent No.5 i.e. Spacegears Switchgears Ltd. and the said project seems to have been assigned to Respondent No.1 Company. However, the Respondent No.1 Company has not been able to start the construction activity on the Hydro Power Project till date and has been paying extension fees of Rs.10,000/- per Mega Watt i.e. Rs.50,000/- per month since 1.7.2008. Presently, the Respondent No.1 Company is faced with a situation of cancellation of its license to build, own and operate the Sechi-II 5 MW hydro power project, being its only asset. However,, on one side, the Respondent/Applicant Advocate alleged that the malafide intention of the Petitioner is evident from the fact that while they claim to be 14% shareholders, they have suppressed the transfer of all their 14% shares and resignation from Board of directors of the Respondent No.1 Company. On the other side, the Petitioners/Non-Applicants Advocate has controverted that the Mehra Family, (R-4), in connivance with the Respondent Nos. 1, 6, 7 and 14 conspired to forge and fabricate the share transfers and the resignation letter of the Petitioner Group. Thus, there is controversy over the shareholding of the Petitioners. Yet, it is gathered from the reply of Respondent No.4 that after sale of shares by the Mehra Group, Respondent No.4 has nothing to do with the management of the company but still continuing in the transitional phase till discretion of the new management. From this, it is clear that the new management has got the entire shareholding of the Mehra Family. Further, the Respondent No.5 continues to be 51% shareholder and the said R-5 i.e. Spaceage Switchgears Ltd. in its short affidavit filed before this Hon'ble Board has also sought for dismissal of the Company Petition, which implies that R-5 is in support of Respondent Nos. 1, 6, 7 and 14. Apart from this, the Respondent No.1 represented by the Applicants has been expending an amount of more than Rs.3 lakhs per month on salaries and establishment cost towards the 5 MW hydro electric project. Under the facts and circumstances, it is informed that Mehra Group has exited from the Respondent No.1 Company and the Applicants are investing money to develop the only valuable asset of the Respondent No.1 Company.

The Applicants Advocate has rightly contended that the construction of 5 MW hydro electric project is a capital intensive project and requires an estimated expenditure of Rs.42 crores and hence, it is the necessity to get funding from banks/financial institutions against the security of immovable and movable assets of Respondent No.1 Company. Nonetheless, the argument given by the Petitioners Advocate that the heavy burden on the assets of the company cannot be undone, carries some force. But, it is relevant to highlight that the interest of the Respondent Company is supreme and such interest lies in completion of the 5 MW hydro electric project. Therefore, to part finance the project, there is requirement to raise funds from banks/financial institutions against security of immovable and movable assets of the company. Keeping in view the allegations contained in the Company Petition, facts and circumstances explained supra, I am of the considered opinion that the 5 MW hydro electric project be taken up by the Respondent No.1 Company by raising loans from banks/financial institutions and the sums so borrowed be utilized for efficient and effective completion of this project without involvement of diversion of funds for other purposes. Therefore, in the interest of the Respondent No.1 Company and justice, I hereby direct that -





