Sharda Motor Industries Ltd.

SMIL: BSE/NSE: 17-18/2906-01

29th June, 2017

BSE Limited
Department of Corporate Services
Pheroze Jeejeebhoy Towers
Dalal Street, Mumbai - 400 001
(SCRIP CODE - 535602)

National Stock Exchange of India Limited
Exchange Plaza, 5th Floor
Plot No. C/1, G Block
Bandra - Kurla Complex, Mumbai - 400 051
(Symbol - SHARDAMOTR) (Series - EQ)

Sub: Intimation under Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Dear Sir/ Madam

In continuation to our earlier letter dated 27th April, 2017, regarding the matter of Rohit Relan & others Vs. Sharda Motor Industries Limited & Others, before National Company Law Tribunal, Delhi ('NCLT'), please find enclosed herewith the interim order passed by the NCLT dated 27th June, 2017.

Please take the same on record.

Thanking you,
Yours faithfully,
For SHARDA MOTOR INDUSTRIES LIMITED

Nitin Vishnoi
Company Secretary

SHARDA MOTOR INDUSTRIES LTD. New Delhi

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CIN NO-L74899DL1986PLC023202

THE NATIONAL COMPANY LAW TRIBUNAL,

PRINCIPAL BENCH,

AT NEW DELHI

COMPANY APPLICATION NO. 132/(PB)/2017

IN

COMPANY PETITION NO.61/(ND)/ 2017

PRESENT: CHIEF JUSTICE (RTD.) SHRI M. M .KUMAR, HON'BLE PRESIDENT &

SMT DEEPA KRISHAN, MEMBER (TECHNICAL)

In the matter of:

Section 241 and 242(4) The Companies Act, 2013.

In the matter of:

Rohit Relan & Ors. **Petitioners**

Versus

Sharda Motor Industries Ltd. & Ors. **Respondents**

Through: Anuradha Dutt (Advocate)

ORDER

1. This is a Company Application filed in Company Petition No. 61/ND/2017. In the main Company Petition, allegations have been made regarding oppression and mismanagement and several reliefs have been sought. These include, *inter alia,* setting aside of circular resolutions dated 16th March, 2017 and 29th March, 2017 apart from seeking directions for inspection of the books of accounts and other statutory records of R-1 company and restraining R-1 from operating bank accounts etc.

2. The instant CA is filed on behalf of respondent No. 1, namely, M/s Sharda Motors Industry Limited under section 242 (4) of the Companies Act 2013, read with Rule 11 of NCLT's rule 2016. The application seeks to restrain Petitioner-1 from doing business in competition with the business of R-1 where Petitioner -1 is a director. It further prays for passing an order restraining the Petitioners from interfering in supply of automotive parts by R-1 to Bharat Seats Ltd(for brevity BSL), from diverting the business that R-1 to ND Relan Industries Company, and also diverting the business of R-1 Company to any other Company.

3. It is alleged that petitioner No.1- non applicant has incorporated M/s N.D. Relan Industries Private Limited (hereinafter referred to as "New Company") on 3/2/2017 where all the shares are held by the petitioner and his immediate family members (petitioners' No. 1 to 5) to the exclusion of the respondents. Extract of memorandum of association has been given in the petition that shows that the New Company has been incorporated to carry on the business of manufacturing, dealing and supplying components for the automotive and non-automotive industry. It is stated that these are the same products as are being manufactured by R-1 Company for supply to BSL. The main allegation is that the New Company started by petitioner is in direct competition with business of R-1 Company and this is a breach of the fiduciary duties of Petitioner No.1 as a director of R-1 Company. It is stated that section 166 of the Act imposes statutory prohibition on the Petitioner No. 1 as a director from entering into a competing business with the company of which he is a director or from gaining any advantage either to himself or to his relatives. The respondents claim that they have sought just and equitable relief by seeking to restrain Petitioner No.1 from engaging in transactions in which he may have direct or indirect interests that conflict with R-1 Company.

4. It is also alleged in the application that the petitioners have incorrectly alleged that the New Company was contemplated by the parties during settlement discussions and it had been agreed that R-1 units which supply products to BSL was to be merged into a Special Purpose Vehicle (SPV) under the sole and absolute control of the petitioners and the New Company is formed for this purpose. The petitioner has relied on a purported draft memorandum of family settlement of October and November 2016 which allegedly has not been finalised and executed till date. Thus, the applicant in the CA has vehemently questioned the reliance placed on draft memorandum of family settlement and has also alleged that the petitioner did not disclose to R-1 his interest in the New Company as required by section 184 read with 189 of the Act. The applicant has further alleged that the petitioner has taken steps to enhance the existing technical and mechanical capacity of manufacturing unit at BSL in order to manufacture in house, the products being presently manufactured and supplied by R-1 Company to BSL.

5. Briefly it is stated that R-1 Company was incorporated on 29th January, 1986 by the Relans, which entered into a joint venture agreement for manufacturing seats for four wheeler vehicles manufactured by Maruti. BSL was set up in March 1986 as a joint venture of Suzuki Motor

Corporation, Japan, Maruti Suzuki India Limited and the Relans for the manufacture of seating systems and interior components for the automotive and surface transport. The applicants have stated that R-1 Company used to supply seat parts and seats to Maruti Suzuki Limited even before the incorporation of BSL. Petitioner No.1 is the Chairman and Managing Director of BSL and Respondent No. 2 has never been involved in the operations of BSL. It is further stated that while BSL was incorporated in 1986, R-1 continued its direct supplies to Maruti Suzuki till 2003-2004. It is further stated that presently R-1 is supplying frames and trims to BSL which are used to manufacture composite seats for supply to Maruti Suzuki.

6. The applicants have alleged that Petitioner No. 1 has clandestinely purchased machinery for manufacturing seat frames and trims within BSL and has set up independent units to enhance its manufacturing facilities. Copies of purchase orders placed by BSL on R-1 Company 2015 and 2017 have been filed to show that BSL is now placing orders only for arm rests instead of complete seat frames.

7. It is alleged that P-1 is investing capital to enhance the technical competence of BSL and this would adversely affect the business of R-1 Company. It is stated that R-1 is a shareholder in BSL to the extent of

28.66% and it is in the interest of both R-1 and BSL that R-1 continues to supply products to BSL. It is also stated that the total sales of R-1 to BSL amount to approximately 25 per cent of R-1's entire business, and the acts of Petitioner No. 1 would erode this business causing huge loss to the applicant. It is also stated that R-1 had set up a unit for manufacturing seat metal component exclusively for BSL in 2012-2013 and had invested INR 80 crores in the same. The applicant's main prayer is to pass an order restraining P-1 from carrying on any competing business with R-1 Company where Petitioner No. 1 is a director.

8. In their reply, the petitioners- non applicant while raising preliminary objections have denied each and every allegation made in the CA and have stated that the CA filed by R-1 company is not maintainable as the company in oppression and mismanagement proceedings, is merely a proforma party and the dispute is between the two groups of shareholders. However, this objection has not been raised before during the course of arguments.

9. It is also stated in the reply that the application is not maintainable as the Tribunal does not interfere in the management decision of any company. The non-applicant-Petitioner (P-1) has asserted that the issue of incorporation of a New Company has already been dealt with by Petitioner-

non-applicant-1 in their rejoinder to the reply of R-2 in the C.P. It is stated that the New Company is lying as it is without any operation whatsoever as the amicable division of the Relan Group Company between the two brothers has not yet taken place. On reading of the detailed reply by the petitioner to the CA, it is seen that Petitioner No.1 and Respondent No.2 are brothers and both are shareholders and directors of both R-1 Company and BSL.

10.1 1 It is noted that R-1 Company was incorporated on 29 January, 1986 and is engaged in the business of investment and automobile components. While the Petitioner holds 27.03% of its shareholding, the Respondents have 47.43% shares. 7.58% of the share were held by the father of both Petitioner No.1 and R-2 and public shareholding amounts to 25.04%.

10.2 On the other hand, Bharat Seats Limited (BSL) was incorporated on 6th March 1986 and is in the business of manufacturing of Automobile seats. Its major shareholders are R-1 Company 28.66%, Petitioner 6%, non-applicant and Respondents 10.04%, Maruti Suzuki 29.6% and 25.62% shares are held by public.

10.3 It is also seen that both P-1 and R-2 namely Rohit Relan and Ajay Relan (brothers) are directors in both R-1 Company and BSL. While P-1 is the Managing Director of BSL, R-2 has averred in the instant C.A. that he is not involved in the day to day management of BSL.

10.4 Apart from BSL, R-1 is also a major shareholder in the three group companies namely Relan Industry Finance Ltd, Toyoto, Boshoku Relan India Pvt. Ltd., Toyoto Sharda India Pvt. Ltd. The petitioner has 23.08 per cent shareholding in Relan Industry Finance Ltd., and R-2 to R-6 and R-7 also have about 30% shareholding in that company. While both R-2 and P-1 are Directors of Boshoku Relan India Pvt. Ltd. and Toyoto Sharda India Pvt. Ltd., they do not have any shareholding therein.

11. The applicant-Respondent No. 1 in the C.A. has prayed for restraining Petitioner No. 1 from doing business in competition with the business of R-1 in which he is a director as this is violative of his fiduciary duties and he is guilty of breach of Section 166 of the Companies Act, 2013. The relevant provisions of Section 166 are reproduced below:-

Duties of directors.

166. *(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.*

(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

12. The applicant-Respondent has also averred in the application that P-1 was bound to disclose in terms of Section 184 r/w Section 189 of the Act, his admitted interest in the New Company. The relevant provisions of Section 184 are quoted below:

Disclosure of interest by director.

184. *(1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.*

(2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into-

(a) with a body corporate in which such director or such director in association with any other director, holds more than two percent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

13. Learned counsel for the Applicant-Respondent No. 1 Company has drawn our attention to judgement rendered by the Hon'ble Supreme Court in the case of Rajiv Saumitra v. Neetu Singh 2016 SCC OnLine Del 512 wherein in para 58 and 59 the issue of fiduciary duty of the director has been discussed.

14. We have considered the arguments and averments made by the both the applicants and petitioner non-applicant as well as the facts that both Petitioner and Respondents hold a large percentage of shares of BSL and R-1 company. The grievances of applicant-R-1 Company as detailed in the instant C.A. can be classified into two categories namely (1) the New Company set up by the PetitionerNo.1 and his family members is in competing business with R-1 Company, and (2) the Petitioner is investing

in technical and financial upgradation of BSL by setting up new units of BSL that would again adversely affect the business of applicant-R-1 Company.

As far as the first category of grievance regarding setting up of the New Company by Petitioner No.1 and his family members is concerned, it is noted that the New Company has been incorporated only on 03.02.2017 and as per the reply of Petitioner No.1 it has not yet started its operation. The question whether the operations of the New Company would be in competition with the business of R-1 Company and adversely affect the same is, in our view, premature.

14.2 The second category of grievance relates to technical and financial upgradation of BSL thereby diverting the business of R-1 Company to BSL. We have noted that the business model of the Relan Group of Companies is that R-1 Company supplies trims and frames to BSL that in turn, manufactures complete seat systems for onward supply to Maruti. Petitioner No.1 in his detailed reply to the instant C.A. has given details of e-mail correspondence between Maruti Suzuki India Limited (MSIL) and R-1 Company wherein issues of quality have been raised by MSIL. A copy of the minutes of meeting of Board of Directors of Bharat Seats Limited held on 20.04.2017 has also been filed by Petitioner No.1 in his reply to the instant C.A. As per item No. 9 of these minutes there is a comparison

of financial data of BSL with that of other suppliers to Maruti namely Krishna Maruti Limited and Harita Maruti Limited for the year ended 31.03.2016. It is stated that due to higher rates of material costs and lower volumes, the gross profit margin, operating margin and net profit margin are lower than that of Krishna Maruti Limited. It is further stated that the Committee discussed the matter and suggested the BSL to examine if the raw material costs would be reduced, the volumes of existing business would be increased and whether the Company can diversify into new areas.

15. We have noted that both R-1 Company as well as other Respondents namely R-2 to R-7 and P-1 have significant shareholding in BSL. In fact, the shareholding of the Respondent group whether in their own stead or through their shareholding in R-1 Company is higher than the shareholding of Petitioner No.1. Thus, any technical or financial upgradation by way of setting up new units of BSL cannot be said to be work to the detriment of either R-1 Company or the Respondent group, as both have significant shareholding in BSL and will benefit by its financial and technical upgradation.

16. As far as violation of Section 166 of the Act is concerned, Petitioner No.1 was required to disclose his interest as per Section 184 of the Act at the first meeting of the Board in every financial year or in the first meeting

held after such change. The New Company was incorporated on 03.02.2017 and the applicant Respondent No.1 has not produced any document to show that a Board meeting was held thereafter, and in such Board Meeting Petitioner No.1 did not disclose his interest in R-1 Company.

17. The applicant-Respondent has alleged in the application that BSL has been curtailing the issue of purchase orders to R-1 Company and has thus adversely affected the business of R-1 Company. In support of this allegation copies of purchase orders of BSL to the supplier R-1 Company have been filed. It is seen that the first purchase order dated 21.03.2015 and stated to be for the period 01.04.2015 to 31.03.2016 which amounts to INR 84,95,02,381/- while the second purchase order dated 04.04.2015 (no period of order given) amounts to INR 8,70,406/-. The third purchase order is dated 30.03.2017 and again there is no indication of the period during which these supplies were made. The total value of the purchase order excluding taxes comes to INR 108,15,28,782/-. The above quoted purchase orders do not indicate that the supplies ordered by BSL from R-1 Company have shown any significant reduction.

18. We do not find any cogent reason to hold that the New Company started by the non-applicant petitioner is in direct competition with the business of R-1 Company and it would result in loss of business to the applicant respondents. The non-applicant petitioner in his reply to the CA has stated that the New Company has not yet commenced its operations. Any investment and technological upgradation by it in setting up new units of BSL would also benefit the applicant-respondents who hold a larger percentage of shares in BSL than the non-applicant petitioners. It may be noted that the R-1 Company, in which again the respondents have a higher shareholding are also a 28.66 per cent shareholder in BSL. Admittedly the applicant-respondents do not have any shareholding in the New Company, namely, M/s N.D. Relan Industries Private Limited incorporated by the Petitioners, but the New Company has not yet commenced its operations and the probability of business of applicant R-1 Company being diverted to the New Company is a possibility in future and presently poses only an academic question.

19. It is also noted that the issue of setting up the New Company has also been raised in the Company Petition pending before this Tribunal. Therefore the prayer in the application is beyond the area of main company petition. As

the New Company has not yet commenced its operations, it presently has no impact on the working of the R-1 company.

20. For all the reasons aforesaid the instant Company Application is dismissed.

Sd/-

27.06.2017

(CHIEF JUSTICE (Rtd.) M.M. KUMAR)

PRESIDENT

Sd/-

(DEEPA KRISHAN)

MEMBER (T)