

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**ORDER SHEET OF THE HEARING ON 16<sup>th</sup> MAY, 2024, 10:30 A.M.**

**CP /2/GB/2023**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao  
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

In the Matter of	Dhanpat Raj Sethia Vs Asheerbad Construction Co. Pvt. Ltd. 2. Ratan Sarma, 3. Abhisek Sarma, 4. Arunav Sarma & 5. Registrar of Companies, NER, Guwahati
Under Section	U/s 252(3) of Companies Act, 2013

For Petitioner (s) : Mr. A. Pareek, CS

For Respondent (s) : Ms. S. Das, Adv. 1-4

**ORDER**

Order pronounced in the open court *vide* separate sheets.

Sd/-  
**Satya Ranjan Prasad**  
**Member (Technical)**

Sd/-  
**H.V. Subba Rao**  
**Member (Judicial)**

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**CP No. 2/GB/2023**

*In the matter of:*

An Application under Section 252 (3) of the Companies Act, 2013; An application seeking restoration of the name of the company on the Register of Companies maintained by the Registrar of Companies, NE Region, Guwahati;

-And-

*In the matter of:*

**Dwarka Enclave Owners Society**, UAIN No. RFS-RS/2021/01693, registered office at Dwarka Enclave, Maligaon Chariali, Near Punjab National Bank, PO Maligaon, PS Jalukbari, Guwahati-781011, represented through Mr. Dhanpat Raj Sethia; **... Petitioner**

-Versus-

**Asheerbad Construction Co. Pvt. Ltd.**, CIN: 45201AS1995PTC004583, present office at 7th Floor, Dawarka Enclave Maligaon chariali, Maligaon Guwahati-781011;

**.... Struck Off Company/ Respondent no. 1**

-And-

**Ratna Sarma**, w/o Late Rabindra Nath Sarma a resident of 7th Floor, Dawarka Enclave TA Maligaon chariali, Maligaon Guwahati-781011; **... Respondent no. 2**

-And-

**Abhisek Sarma**, s/o Late Rabindra Nath Sarma presently resident of E-92, MJR Platina, Hosur Main Road, Kullu Gate, Industrial Layout, Begur, Bengaluru, Karnataka-560068;

**... Respondent no. 3**

-And-

**Arunav Sarma**, s/o Late Rabindra Nath Sarma resident of E-92, MJR Platina, Hosur Main Road, Kullu Gate, Industrial Layout. Begur, Bengaluru, Karnataka-500068;

**... Respondent no. 4**

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-And-

**The Registrar of Companies**, Guwahati, NER having his office at 1<sup>st</sup> Floor, BSNL Bhawan Building, Ananda Ram Baruah Road, Pan Bazaar, Guwahati, Assam- 781001.

**... Respondent no. 5**

***Coram:***

Shri H.V Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

**Appearances (through video conferencing)**

For the Applicants : Mr. Amit Pareek, CS

For the Respondent : Ms. Suman Das, R-1 to R-4

**Order reserved on: 08.05.2024**

**Order pronounced on: 16.05.2024**

**ORDER**

1. This Company Petition has been filed by Mr. Dhanpat Raj Sethia in the capacity of Secretary of Dwarka Enclave Owners Society, Guwahati, a Society Registered under the Provisions of the Societies Act, XXI of 1860, **under Sec. 252(3) of the Companies Act, 2013**, seeking restoration of the name of the struck off Respondent Company namely, **M/s. Asheerbad Construction Co. Pvt. Ltd.** (CIN No. 45201AS1995PTC004583) in the Register of Companies, maintained in the office of the Registrar of Companies, NER.
2. The Respondent Company was incorporated on 27.09.1995. The Authorized Share Capital of the Respondent Company is Rs. 1,00,00,000 (Rupees One Crore Only) and the Paid-Up Share Capital of the Respondent Company is Rs. 25,00,000 (Rupees Twenty Five Lakh Only).
3. The Petitioner submits that Respondent No. 1 Company has 2 directors as per the MCA Database, Ratna Sarma (DIN 01223295) and Rabindranath Sarma (DIN 05211905).

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Late Rabindranath Sarma expired on 02.06.2021 after the demise of Late Rabindranath Sarma, the affairs of Respondent No. 1 Company being a closely held private limited Company is managed by Ratna Sarma along with her sons namely Abhisek Sarma and Arunav Sarma being the Respondent number 3 & 4 respectively.

4. The Petitioner further submits that he as an authorised person on behalf of the agreement holders of Flats and commercial space of a multi- storeyed building namely Dwarka Enclave which was constructed by the Respondent No.1 Company have filed the present Company Petition in capacity of Creditor of the Respondent No.1 Company since the Sale Deed of the Applicants are yet to be registered by Respondent No.1 Company. At the time of agreement for sale, the Respondent No.1 Company status was active till the date of struck off from the Register of companies vide Notice dated 09.06.2017. Respondent No.1 Company has been struck off from the Register of Companies by Respondent No. 5 pursuant to Section 248 (1) & (5) of Companies Act 2013 vide Notice dated 09.06.2017 for non-filing of financial statements and annual returns from the financial year 2002-03 onwards.
5. The Respondents No. 1 to 4 filed detailed affidavit in reply, written submissions and additional affidavit opposing the above petition. Important paragraphs are extracted hereunder:
  - 5.1 The Registrar has rightly struck off the name of the company and restoring it will cause legal harm and injury to the respondents. Furthermore, this Tribunal cannot pass any directory order to the Respondent No. 1 to register a sale deed as the same is not within the purview of the powers of this court and the same lies with a civil court. The petitioner has tried to cause harm to the reputation of the Respondent's names by alleging tax evasion without any cogent proof.
  - 5.2 After the demise of Late Rabindranath Sarma on 02.06.2021, the affairs of the Respondent No.1 Company was managed only by the Respondent No.2 and not by her sons. This petition fails for mis-joinder of parties as the Respondent Nos. 3 and 4 are the sons of the Respondent No. 2 and they are not related to the affairs of Respondent No. 1 Company. The Respondent Nos. 3 and 4 are neither

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the directors nor members of the Respondent No. 1 Company. They have not been elected as Directors of the company and are neither the workers of the Respondent No. 1 Company. They are currently in service in the private sector and are legally not permitted to hold the position of a Director or run any company or be a director of any company. The mere fact that they are the next of kin or a legal heir of a deceased Director of the Respondent No. 1 Company in no way upholds a legal liability upon them to be arrayed as a party to a suit before this tribunal and hence this petition fails for the mis-joinder of necessary parties.

- 5.3 The main contention of the Petitioner is that they want to restore the company for registration of their residential and commercial space but the Petitioner has deliberately suppressed material facts from this tribunal that the registration of the sale deed for sale of flats and commercial space in favour of the buyers couldn't be completed due to a stay order issued by the Hon'ble Gauhati High Court in WP(C) No. 6498/2003 wherein *vide* order dated 22.08.2003, all resettlement operations in and around land belonging to Kamakhya Devalaya was suspended and the concerned authority was asked to not allow any transfer of such land. The registration of the sale deeds implies the transfer of the proportionate share of land and therefore there was a legal hurdle presented before the Respondent No.1 Company and its directors. Thereafter, the aforesaid stay order in WP(C) 6498/2003 was in place for 19 years until eventually when the case was disposed on 27.10.2022 with the directions that within six months the land of the Kamakhya Devalaya should be demarcated and till date the operation is going on and registration of the land is yet to start. Incidentally, the Petitioner, who was a party in WP (C) 6498/2003 deliberately did not mention this crucial fact in his petition thus committing the offense of perjury and this tribunal is should not grant any relief to a Petitioner who does not come before this tribunal with clean hands.

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- 5.4 In terms of section 248(7) of the Act, the liabilities of members, directors, managers and officers of the company continues even after dissolution of the company under this section and these liabilities are enforceable against them as if the company was never dissolved. It is pertinent to note that the existing liability of any director or member prior to the dissolution of the company will continue in spite of the dissolution and in order to fulfil that responsibility, on 01.12.2022, the Respondent No.2 sent a letter for intimation of execution of sale deed to all the residents of Dwarka Enclave including the petitioners requesting them to verify whether sale deeds can be registered or not and she further stated that in case there is a court order/legal provision to execute the sale deed of the residential apartments at Dwarka Enclave the process of execution of sale deed can be started without any delay.
- 5.5 Moreover, as on date the registration of flats have been stayed by the Hon'ble Guwahati High Court in W.A. No. 53 of 2023 *vide* order dated 17.02.2023, wherein the Petitioner is also a party. The Petitioner has committed an act of perjury by concealing this material fact from this tribunal.
6. Heard Mr. Amit Pareek, Ld. PCS appearing for the Applicant and Ld. Counsel Mr. S. Das appearing for Respondent Nos. 1 to 4.
7. It is an admitted fact on both sides that the Petitioner along with 19 others are the purchasers of flats from the Respondent Company- M/s. Asheerbad Construction Co. Pvt. Ltd under different registered agreements of sale which did not culminate into final sale deeds in view of striking down the name of the Respondent Company. Therefore, the Applicant on his behalf as well as on behalf of the other flat buyers filed the present Company Petition.
8. The Respondent Company is opposing the above Company Petition contending inter alia on the ground that a dispute is pending in W.A. No. 53 of 2023 before the Hon'ble Guwahati High Court in respect of a land situated near the Kamakhya Devalaya in which the Petitioner purchased flats is also a part and parcel.

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9. It is also an admitted fact that the Applicant as well as the Respondent Company are party Respondents in the Writ proceedings and a *status quo* order dated 17.02.2023 is subsisting in respect of the entire land.
10. It is an admitted fact that Petitioner along with other aggrieved flat owners are in exclusive possession and enjoyment of their respective flats. It is also the admitted case of the Petitioner that they filed the above application for restoration of the name of the Respondent Company only for obtaining sale deeds in their names and to complete the sale transactions.  
It is also an admitted fact that the Applicant did not mention about the pendency of the Writ proceedings nor filed the copy of the Writ Appeal and *status quo* order in their Company Petition.
11. Upon hearing the submissions of both sides and after perusing the material on record, this bench is of the considered view that the Respondent Company namely M/s Asheerbad Construction Co. Pvt. Ltd. cannot execute any sale deed in the name of the Petitioner and other flat buyers even if the name of the Company is restored in view of the pendency of the Writ Appeal 53 of 2023 in the Hon'ble Gauhati High Court and the subsistence of stay order dated 17.02.2023 and therefore no useful purpose would be served to the Petitioner even if the above Company Petition is allowed and the name of the Respondent Company is restored by the RoC.
12. It is very clear from the conduct of the Petitioner that the Petitioner and the other flat buyers instead of pursuing their remedy before the Hon'ble Guwahati High Court being parties to the Writ proceedings approached this tribunal by way of the above Company Petition by suppressing the above facts.
13. Hence, for the aforesaid reasons, we are of the considered opinion that there is no merit in above Company Petition and the same deserves to be rejected. Accordingly, the instant petition, *i.e.* **CP No. 2/GB/2023 stands dismissed.**
14. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

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15. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
16. File be consigned to record.

Sd/-

**Satya Ranjan Prasad  
Member (Technical)**

Sd/-

**H.V. Subba Rao  
Member (Judicial)**

*Signed this on 16<sup>th</sup> day of May, 2024*