

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

Contempt Application No. 4/KB/2022

In CP No. 150/(KB)/2020

Application under 12 of the Contempt of Courts Act, 1971;

In the Matter of:

*Order dated 28th December, 2020 passed by the NCLT, Kolkata Bench,
in CP No. 150/KB/2020.*

AND

In the matter of:

- 1. Suneel Swaika, son of Bijoy Kumar Swaika, residing at 6, Moore Avenue, Kolkata – 700 040.*

....Applicant

Vs.

- 1. Rajeev Swaika, residing at 6, Moore Avenue, Kolkata – 700 040;*
- 2. Niharendu Biswas, presently residing at Flat No. 404, Moore Heights Apartment, 93, Manick Bandopadhyay Sarani, Kolkata – 700 040;*
- 3. Moore Avenue Properties Pvt. Ltd., a company incorporated within the meaning of the Companies Act, 2013 having its registered office at 18B, Brabourne Road, PNB House, Kolkata – 700 001;*

....Respondents

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Date of Pronouncement of order: 05.07.2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri D. Arvind : **Member (Technical)**

Counsel appeared physically / through video Conferencing

Mr. D.N. Sharma, Adv.] For the Petitioner

Mr. Ratnesh Kumar Rai, Adv.]

Mr. Ankan Rai, Adv.]

Ms. Aparajita Rao, Adv.] For the Respondent No.1

Mr. S. Tibrewal, Adv.]

Mr. Arindam Mrinal Pal, Adv.] For Respondent No.2 in

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Ms. Adwitiyaa Das, Adv.]

Mr. Pramit Chakraborty, Adv.]

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Counsel for the parties were heard at length.
3. This Contempt application No. 4/KB/2022 arising out of CP No. 150/KB/2022, has been preferred by Suneel Swaika alleging

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violation of the order dated 28.12.2020 confirmed by the order dated 23.12.2021 passed in CP No. 150/KB/2020 by this Tribunal. The order to the violation whereof is alleged, the operative portion is as under:

“Mr. Rishav Banerjee, Ld. Counsel appears on behalf of one of the shareholders of the struck off company and submits that he is entitled to some shares of his father by way of transmission, and that he fears that once the Company's name is restored to the register, the other shareholders/directors may dispose of some assets and thereby deprived him of his rights as a shareholder. This is a matter that will have to be considered in an appropriate proceeding and not under section 252 of the Companies Act, 2013. However, we note that Mr. Rishav Banerjee's client has no objection to the restoration as such, as long as his interests are protected. Similar concerns have been expressed by Ms. Manju Agarwal appearing for some other shareholders. However, she too has no objection per se to the restoration of the name of the company. Be that as it may, we order restoration of the Company to the register at the cost of Rs. 30,000/- (Rupees Thirty Thousand only) to be paid to the

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ROC and also injunct the Company from dealing with its assets in any manner without the leave of the court. The other shareholders will be heard in appropriate proceedings.”

4. The order dated 23.12.2021, while recording the restoration of the Company at the cost of 30,000/- to be paid to the RoC, as mentioned in the order dated 2020, records that the CP No. 150/KB/2020 is disposed of with the directions as in the order dated 28.12.2020 quoted therein. Therefore, primarily the violation alleged is of the direction as in the order dated 28.12.2020 injuncting the company from dealing with its assets.
5. It is alleged that although specifically this Tribunal had restrained the company or injuncted the company from dealing with its assets in any manner without its leave thereby restraining the directors / shareholders of the company, the alleged Contemnor the Respondent No. 1 / Petitioner in CP No. 150/KB/2020 has given a purported license to one Mr. Niharendu Biswas the Respondent No. 2 to stay along with his family in flat No. 404 Moore Heights Apartment, 93, Manick Bandopadhyay Sarani, Kolkata – 700 040 from 01.04.2021 to 28.02.2022 as would be evident from

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letter dated 01.04.2021, issued by Respondent No. 2 which property belongs to Respondent No. 3 company.

- 6. It is alleged that the Respondent No. 1 / alleged Contemnor No. 1 and the Respondent No. 2 / alleged Contemnor No. 2 have thereby deliberately or wilfully and contumaciously acted in violation of the order dated 28.12.2020.*
- 7. In contempt application, it is alleged that Respondent No. 2 had no right to use the said premises in any manner whatever.*
- 8. In reply, alleged Contemnor / Respondent No. 1 Mr. Rajeev Swaika has emphatically admitted that this Tribunal was pleased to injunct the Respondent No. 3 from dealing with the assets. At the same time, the said answering Respondent has on affidavits declared that Applicant himself is enjoying the flats allocated to him under an award and the petition is thus vexatious and filed with oblique motive and mala fide intention. The Respondent has claimed that it has not dealt with any assets of the Company without leave of this Tribunal.*
- 9. The Respondent No. 2 being Mr. Niharendu Biswas has stated that the Respondent No. 1 had represented to him that he was the sole and absolute owner and or otherwise well and sufficiently entitled*

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to Flat No. 404 inside the Moore Heights Apartment, at premises No. 93, Manick Bandopadhyay Sarani, Kolkata – 700 040 and the Respondent No. 1 and was authorized to let out such flat on leave and license basis.

10. *It is averred that since Respondent No. 2 was interested on taking a property for 11 months on “leave and license” basis. An agreement was entered into between the Respondent No. 1 and Respondent No. 2 and required license fees have been paid to Respondent No. 1.*

11. *It is urged that Respondent No. 2 however was not a party to the proceedings arising out of CP No. 150/KB/2020 and as such did not have any knowledge of the order, therefore, he has not committed any contempt of the order dated 28.12.2020.*

12. *At hearing, we have been taken through an order dated 09.01.2024 passed by the Hon'ble High Court in the matter of Rajeev Swaika Vs. Suneel Swaika and Ors., EC/494/2019 in IA No. GA/1/2023 seeking execution of award dated 09.09.2010 whereby Arbitral Tribunal partitioned and awarded the properties and business of Bijay Kumar Swaika (since deceased) to two sons,*

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Rajeev Swaika (the decree holder) and Suneel Swaika (the judgment debtor No. 1) and the said order reads as under:

“For the above reasons, there are no grounds to oppose the prayers made for in this application. There shall be an order in terms of the prayers (a) and (c) of the Tabular Statement. Mr. Prabhakar Choudhury, a member of the Bar Library is appointed as a Special Officer to implement this order and to oversee execution of the deeds of separation in terms thereof. The minor typographical error in the draft deed forwarded by the Advocates of the decree holder is to be ignored. The remuneration of the Special Officer is assessed at 3000 gms to be shared equally by both the parties. The parties are left to take appropriate steps in accordance with law insofar as the assets and properties in the Fourth Schedule of the award are concerned. With the aforesaid directions, EC 494 of 2019 is disposed of. GA 1 of 2023 stands dismissed”

13. In view of the separation, as aforesaid allowed to the estate of Late Bijay Kumar Swaika in terms of the award and in view of

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the fact that leave and licence was granted for a limited period which is long over.

14. *We find no reasons to haul up Respondent No. 2 in contempt proceedings being not a party of the order passed in CP No. 150/KB/2020 and Respondent No. 1.*

15. *For similar reason, we find no urge to haul up alleged Contemnor No. 1 as long for there has been a separation of the estate of Late Bijay Kumar Swaika in term of the award as it appears from the order quoted above.*

16. *We are however, unable to decipher whether the property in question has devolved upon the Petitioner or the Respondent.*

17. *Accordingly, Contempt proceedings are dropped. Notices, if any issued, are discharged.*

18. *With the above directions, this Contempt Application No. 4/KB/2022 is disposed of.*

19. *The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.*

20. *Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.*

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*D. Arvind
Member (Technical)*

*Bidisha Banerjee,
Member (Judicial)*

Signed on this the 05th day of July, 2024

M. Jana (P.S.)