

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
CP 77 of 2019

Order under Section 75 of LLP Act,
2008 r.w rule 37(5) of LLP Rules 2009
r.w Rule 11 on NCLT Rules, 2016

IN THE MATTER OF:

Omprakash Ratanlal Malavia & Anr
V/s
ROC & Ors

.....Applicant

.....Respondent

Order delivered on: 15/07/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-I**

C.P. No. 77/NCLT/AHM/2019

[Application under Section 75 of the LLP Act, 2008 r.w. Rule 37(5) of LLP Act, 2008 r.w. Rule 11 of the NCLT Rules, 2016 and Section 252 of the Companies Act, 2013]

In the matter of: M/s. Springvelly Projects LLP

In the matter between:

1. Mr. Omprakash Ratanlal Malavia

Having address at:
303, Shree Niketan Tower,
Opp. Darpan Academy,
Usmanpura, Ahmedabad-380013,
Gujarat, India.

2. Mr. Dinesh Kumar Manilal Patel

Having address at:
F/1, Bungalow Sahjanand City,
Near Sukan Silvar, Kudasan,
Gandhinagar, Ahmedabad-382421,
Gujarat, India.

.... Petitioners

VERSUS

1. Registrar of Companies, Gujarat

Having office at:
Registrar of Companies,
ROC Bhawan, Vijaynagar,
Naranpura, Ahmedabad,
Gujarat- 380013

2. M/s. Vintron Infrastructure and Projects Pvt. Ltd.

Having office at:
402, Sarthik-2, Opp. Rajpath Club,
S.G. Highway Road, Ahmedabad-380054.

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3. Mr. Hemant Parikh

Director of Vintron Infrastructure and Projects Pvt. Ltd.
Office at: 402, Sarthik-2, Opp. Rajpath Club,
S.G. Highway Road,
Ahmedabad-380054.

.... Respondents

Order Pronounced on: 15.07.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Vishal Dave, Advocate
For the RoC : Ms. Vipal Solanki,
Company Prosecutor

ORDER
[Per: Bench]

1. The present Company Petition No.77 of 2019 was filed by one Mr. Om Prakash Malavia & Mr. Dinesh Kumar Manilal Patel, the designated partners of the company, **M/s. Springvelly Projects LLP**, having address at: 303, Shree Niketan Towe, Opp. Darpan Acedamy, Usmanpura, Ahmedabad-380013, Gujarat, India, under the Provision of Section 252 of the Companies, Act, 2013 to revive M/s. Springvelly Projects, LLP, which was struck off by the Respondent No.1/RoC on 14.08.2018 due to its failure to

file the statutory returns of company for a continuous period of more than two years.

2. The Petitioners has sought the following reliefs:

- “a) To restore the name of the LLP in the Register of the Companies as maintained by the Registrar of Companies, Gujarat.*
- b) To waive any of the penalty in consequence of violations committed by Respondent No.2 and impose the same on Respondent No.3;*
- c) Any other order as the Tribunal deems fit and proper in the best interest of the Partners of the LLP and*
- d) That such order and other further relief as the Hon’ble Bench of the National Company Law Tribunal deems fit and proper in the interest of justice.”*

3. The brief facts of the matter are tabulated below:

4. The Counsel for the Petitioners states that the Striked off company M/s. Springvelly Projects LLP was originally incorporated under Section 12(1) of the Limited Liability Partnership Act, 2008 on 29.11.2011 in the name and style of M/s Springvelly Projects LLP and having its registered office at: 403, Sharthak-2, Opp. Rajpath Club,

S.G. Highway, Bodakdev, Ahmedabad-380015, IN. Having Corporate Identity LLPIN No. AAA-7073. As submitted, there are three designated partners in the company and the total contribution of the partners is Rs.20,000/-. As per the perusal of documents, the said Company was involved in the business activities of:

“to engage and carry out real estate business on the land situate lying and being at Raysan Gandhinagar, bearing survey no.385, plot no. 242, admeasuring 5327 sq.mtr and survey no. 382, 383, 384 Final plot no. 244 admeasuring 7957 sq.mtr.”

5. It is submitted that the Petitioners’ LLP was active since its incorporation and was maintaining all the requisite documentations as per the provisions of the LLP Act, 2008. The company has three partners in accordance with Section 2(j) of the LLP Act, 2008 and the total profit/loss sharing ration is as under:

Sr.	Name of Partner/Party	Profit/Loss Ratio
1	M/s.Vintron Infra. & Projects Pvt. Ltd.	50%
2	Om Prakash Malavia	25%
3	Dinesh Kumar Patel	25%
Total		100%

6. It is submitted that all the above partners entered into an agreement to develop projects and to bring the same understanding into reality, parties had agreed to become partners on incorporation of the LLP to carry on partnership business. The said agreement is annexed to the present application as Annexure-4.
7. As submitted, the referred land bearing survey numbers in the objectives of the company was to become the assets of the LLP, on which the project was proposed and the said land bearing survey numbers – 382, 383, 384 was owned by the R-2 herein, Mr. Hemant Amrish Parikh.
8. As submitted, the R-2, for the very purpose entered into an MoU dated 19.02.2011 and 17.06.2011 with the Petitioners. It was agreed between the parties that the R-2, being the owner of the land, Petitioners agreed to pay Rs.2.41 Cr. Per Bigha to R-2. Hence, the developers paid the said amount to the owner of the land, R-2. A copy of the said MoU entered between, is annexed to the present application as Annexure-5.

9. As per the terms entered in MoU, the R-2 shall provide the title cleared certificate to the R-3 (the director) for the said land. As mentioned, R-2 also permitted to develop site office on the said land for the development of the project.
10. As submitted, after the execution of MoU, the Petitioners and R-2 Company entered into one LLP agreement dated 14.02.2011. They further entered into a development agreement dated 03.09.2012 to progress the project, which included erection of building, materials required and other material terms. The copy of the said agreement is annexed as Annexure-6.
11. A sale deed was executed on 03.11.2012 in favour of M/s. Springvelly Projects LLP by the father of R-3, i.e. Mr. Amrish Jagmohan for an amount of Rs.3,99,60,000/- thereby making the land bearing Survey No.385 exclusively to own by the said LLP. A copy of the said sale deed is annexed as Annexure-7.
12. As submitted, the land in question was required to be N.A. was the obligation of the R-3, to approach the competent

authority and get it converted in order to transfer the same into the said LLP. As submitted, the Respondent failed to obtain the necessary permissions for conversion of the land to Non-Agricultural as per the conditions of MoU. In Para-21, the Petitioners mentions that the application of the R-3 to the competent authorities was rejected for being non agriculturist. A copy of such rejection letter is annexed as Annexure-8.

13. It is submitted that on the assurance of the R-3 to convert the land into N.A., the Petitioners had to wait for years. Further, as submitted, the R-3 upon failed, sold the land in question to (1) Patel Prajaykumar Nathalal, (2) Patel Chirag Vikrambhai (3) Ramnik Keshavlal Govnaliya urfe Ramnikbhai Keshubhai Patel and (4) Savitaben Ramniklal Gondaliya by executing a registered sale deed bearing No.9118/2018 dated 07.05.2018.
14. It is submitted that the Respondent No.3, through a firm M/s. Wadia Ghandy & Co., which published a public notice dated 24.03.2018 in the newspaper "Divya

Bhaskar” with regards to sale of the disputed property, for which the Petitioners raised objections vide a letter submitted to the firm on 07.04.2018, for the sale, claiming that the property belongs to the Springvelly Projects LLP. A copy of public notice and objections are annexed as Annexure-9 (Colly) to the present application.

15. It is further submitted that the said land was sold to the third parties despite raised objections vide a letter dated 07.04.2018. Further, the said land transaction was mutated with Revenue Record, i.e. Village Form No.7/12 vide mutated entry No.3871 dated 07.05.2018 and the same was certified by the Circle Office, Gandhinagar on 12.06.2018.

16. The Petitioners further submits that he further challenged the order of the Collector before Special Secretary Revenue Department (SSRD) wherein the SSRD has given a *staus-quo*. The Petitioners annexed copies of the proceedings as Annexure-10.

17. As stated, the Petitioners further filed a Special Civil Suit bearing no.274/2018 before the Learned Principal Senior Civil Judge, Gandhinagar for the cancellation of the said sale deed which is pending for the adjudication. The same is marked as Annexure-11.
18. It is averred by the Petitioners that during the aforementioned circumstances, the said LLP was struck off by the Respondent No.1, i.e. the Registrar of Companies without giving opportunity of hearing to the Petitioners being the partner of the said LLP.
19. It is averred that the Petitioners is still pursuing the Civil Remedies against the Respondent No.2 and 3 for the alleged fraudulent act for the land which was include in the LLP agreement.
20. As further submitted, the aggrieved petitioners also invoked the Arbitration clause stated under the LLP agreement; wherein, invocation notice was sent to the R-3 dated 07.04.2018 to which no reply was received from the R-3. The Petitioners approached through emails and calls

to intimate them with respect to the invocation of the arbitration clause. Copy of the said notice is annexed as Annexure-12 to the present application.

21. As per the agreed terms between the parties, the developers to undertake exercise for planning, designing for the developments to be undertaken on the said land and pursuant thereto, Mr. Om Prakash R. Malaviya shall carry out necessary initial work for preparing the development of the site/project, and hence, present application.
22. In reply of the present Application, the Respondents No.2 and 3 have also submitted their Affidavit-in-reply vide diary no..... on we perused the reply at length.
23. The Respondent No.1/RoC appeared and filed its reply to the application in which certain objections were raised against the present appeal. On 16.05.2024, this Bench recorded that the Learned RoC in its reply affidavit has opposed the restoration of the LLP by stating that there is no provision of Law to restore such LLP.

24. Further, during the course of hearing on 11.07.2024, the Learned Company Prosecutor appeared on behalf of the RoC placed before this Bench, a copy of the Gazette Notification dated 11.02.2022. This Bench reproduced the relevant portion as:

“In exercise of the powers conferred by sub-section (1) of section 67 of the Limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby directs that the provisions of sections 90,164,165,167, sub-section (5) of section 206, sub-section (3) of section 207, 252 and section 439 of the Companies Act, 2013 (18 of 2013), shall apply to limited liability partnership, except where the context otherwise requires, with the modifications specified in Column (3) of the Table given below, from the date of publication of this notification in the Official Gazette, namely.”

25. We heard the Ld. Counsel for the Petitioners as well as the Ld. Company Prosecutor on behalf of the RoC and perused the record.

26. Present application was filed on 05.08.2019 vide diary no.8105 when Section 252 was not available to Limited Liability Partnership i.e. much before the aforementioned

Gazette Notification dated 11.02.2022 through which Section 252 was made applicable in respect Limited Liability Partnership as per the LLP Act. However, the present Petition was filed much earlier to the Gazette Notification and Section 252 made applicable to the Limited Liability Partnership later w.e.f. 11.02.2022.

27. The Petitioners further referred a judgment delivered in the matter of *M/s. Propel Holdings LLP V/s. The Registrar of Companies*. In this context, we hold that such judgments hold persuasive value and they are not binding on us.
28. In view of above, the present Company Petition No.77/NCLT/AHM/2019 is not maintainable and is hereby dismissed as per the above terms.
29. A certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

AT

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)